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CHAPTER 3

International Criminal Law

A. EXTRADITION AND MUTUAL LEGAL ASSISTANCE

1. Extradition Treaty with Chile

On June 5, 2013, the governments of the United States of America and the Republic of Chile signed an extradition treaty. The treaty is subject to ratification by each party and will enter into force upon the exchange of instruments of ratification. Upon its entry into force, it will replace an extradition treaty the two countries signed in 1900.

2. Mutual Legal Assistance Treaty with Jordan

On October 1, 2013, the governments of the United States of America and the Hashemite Kingdom of Jordan signed a Treaty on Mutual Legal Assistance in Criminal Matters ("MLAT"). The U.S.-Jordan MLAT is subject to ratification by each party and will enter into force upon the exchange of instruments of ratification.

3. Extradition of Bosnian National for War Crimes Charges

On June 3, 2013, the U.S. Department of Justice announced that the United States had extradited Sulejman Mujagic, "a citizen of Bosnia and Herzegovina and a resident of Utica, N.Y., to stand trial in Bosnia for charges relating to the torture and murder of one prisoner of war and the torture of another during the armed conflict in Bosnia." Department of Justice press release, June 3, 2013, available at *www.justice.gov/opa/pr/2013/June/13-crm-633.html*. After a federal court found Mujagic to be subject to extradition, it certified its findings to the Secretary of State. On May 17, 2013, the U.S. Department of State issued a warrant authorizing the extradition of Mujagic, who was subsequently extradited, as explained below in excerpts from the Department of Justice press release.

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Mujagic is being extradited to Bosnia to be tried for war crimes committed on or about March 6, 1995, during the armed conflict that followed the breakup of the former Yugoslavia. Bosnia has alleged that Mujagic, then a platoon commander in the Army of the Autonomous Province of Western Bosnia, summarily tortured and executed a disarmed Bosnian Army soldier and tortured a second soldier after the two prisoners had been captured by Mujagic and his men.

In response to the Bosnian government's request for extradition pursuant to the extradition treaty currently in force between the United States and Bosnia, the U.S. Department of Justice filed a complaint in U.S. federal district court on Nov. 27, 2012, and HSI [Homeland Security Investigations] special agents arrested Mujagic the next day in Utica for purposes of extradition.

On April 2, 2013, the federal district court in the Northern District of New York ruled that Mujagic was subject to extradition to Bosnia to stand trial for the murder and torture of the two unarmed victims. On May 31, 2013, Mujagic was delivered to Bosnian authorities and removed from the United States. The Office of the Cantonal Prosecutor of the Una-Sana Canton in Bihac is handling Mujagic's prosecution in Bosnia.

Mujagic entered the United States in July 1997 and obtained status as a lawful permanent resident in March 2001. Mujagic does not retain U.S. citizenship.

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4. Extradition of Tunisian National Accused in Attempted Suicide Bombing

In October 2013, the United States government announced that Nizar Trabelsi, a Tunisian national, had been extradited to the United States from Belgium to face charges in the District of Columbia. The October 3, 2013 FBI press release regarding the extradition is available at *www.fbi.gov/washingtondc/press-releases/2013/alleged-al-qaeda-member-extradited-to-u.s.-to-face-charges-in-terrorism-conspiracy*. Trabelsi was indicted in 2006, with a superseding indictment filed in 2007. The indictment, which was unsealed after Trabelsi's extradition, alleges that Trabelsi met with Osama bin Laden and other high-level al-Qaeda members to volunteer and prepare for a suicide bomb attack on a U.S. military facility. Charges against Trabelsi include: conspiracy to kill U.S nationals outside of the United States; conspiracy and attempt to use weapons of mass destruction; conspiracy to provide material support and resources to a foreign terrorist organization; and providing material support and resources to a foreign terrorist organization.

B. INTERNATIONAL CRIMES

1. Terrorism

a. Country reports on terrorism

On May 30, 2013, the Department of State released the 2012 Country Reports on Terrorism. The annual report is submitted to Congress pursuant to 22 U.S.C. § 2656f, which requires the Department to provide Congress a full and complete annual report on terrorism for those countries and groups meeting the criteria set forth in the legislation. The report is available at *www.state.gov/j/ct*. A State Department fact sheet about the 2012 Country Reports, available at *www.state.gov/r/pa/prs/ps/2013/05/210103.htm*, lists the following counterterrorism developments in 2012.

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A marked resurgence of Iran's state sponsorship of terrorism, through its Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF), its Ministry of Intelligence and Security, and Tehran's ally Hizballah was noted. Iran's state sponsorship of terrorism and Hizballah's terrorist activity have reached a tempo unseen since the 1990s, with attacks plotted in Southeast Asia, Europe, and Africa. Both Iran and Hizballah also continued to provide a broad range of support to the Asad regime, as it continues its brutal crackdown against the Syrian people.

The al-Qa'ida (AQ) core in Pakistan continued to weaken. As a result of leadership losses, the AQ core's ability to direct activities and attacks has diminished, as its leaders focus increasingly on survival.

Tumultuous events in the Middle East and North Africa have complicated the counterterrorism picture. The AQ core is on a path to defeat, and its two most dangerous affiliates have suffered significant setbacks: Yemen, with the help of armed residents, regained government control over territory in the south that AQAP has seized and occupied since 2011; also, Somali National Forces and the African Union Mission in Somalia expelled al-Shabaab from major cities in southern Somalia. Despite these gains, however, recent events in the region have complicated the counterterrorism picture. The dispersal of weapons stocks in the wake of the revolution in Libya, the Tuareg rebellion, and the coup d'état in Mali presented terrorists with new opportunities. The actions of France and African countries, however, in conjunction with both short-term U.S. support to the African-led International Support Mission in Mali and the long-term efforts of the United States via the Trans-Sahara Counterterrorism Partnership, have done much to roll back and contain the threat.

Leadership losses have driven AQ affiliates to become more independent. AQ affiliates are increasingly setting their own goals and specifying their own targets. As receiving and sending funds have become more difficult, several affiliates have increased their financial independence by engaging in kidnapping for ransom operations and other criminal activities.

We are facing a more decentralized and geographically dispersed terrorist threat. Defeating a terrorist network requires us to work with our international partners to disrupt

criminal and terrorist financial networks, strengthen rule of law institutions while respecting human rights, address recruitment, and eliminate the safe havens that protect and facilitate this activity. In the long term, we must build the capabilities of our partners and counter the ideology that continues to incite terrorist violence around the world.

Although terrorist attacks occurred in 85 different countries in 2012, they were heavily concentrated geographically. As in recent years, over half of all attacks (55%), fatalities (62%), and injuries (65%) occurred in just three countries: Pakistan, Iraq, and Afghanistan.

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b. UN General Assembly

On October 7, 2013, Steven Hill, U.S. Deputy Legal Adviser for the U.S. Mission to the UN, delivered remarks on measures to eliminate international terrorism at the UN General Assembly Sixth Committee (Legal). His remarks are excerpted below and available at *http://usun.state.gov/briefing/statements/215249.htm*.

* * * *

The United States reiterates both its firm condemnation of terrorism in all its forms and manifestations as well as our commitment to the common fight to end terrorism. All acts of terrorism—by whomever committed—are criminal, inhumane and unjustifiable, regardless of motivation. An unwavering and united effort by the international community is required if we are to succeed in preventing these heinous acts. In this respect, we recognize the United Nations' central role in coordinating the efforts by member states in countering terrorism and bolstering the ability of states to prevent terrorist acts. We express our firm support for these UN efforts, as well as those of the Global Counterterrorism Forum and other multilateral bodies aimed at developing practical tools to further the implementation of the UN CT framework.

We look forward to the next review of the UN Global Counterterrorism Strategy, particularly as an opportunity to examine and evaluate efforts underway to increase Member States' implementation of this important strategy. We strongly welcome the efforts of the United Nations to facilitate the promotion and protection of human rights and the rule of law while countering terrorism, to recognize the role that victims of terrorism can play in countering violent extremism, to improve border management, and to target financial measures to counter terrorism. We are pleased to note our voluntary contributions to the Counterterrorism Implementation Task Force to develop assistance and training in this regard.

Focusing here on the legal developments, we recognize the great success of the United Nations, thanks in large part to the work of this Committee, in developing 18 universal instruments that establish a thorough legal framework for combating terrorism. The achievements of the past ten years are noteworthy. We have witnessed a dramatic increase in the number of states who have become party to these important counterterrorism conventions. For example, over the past ten years 170 states have become party to the Terrorist Financing Convention. The international community has also come together to conclude six new counterterrorism instruments, including a new convention on nuclear terrorism and updated

instruments which cover new and emerging threats to civil aviation, maritime navigation, and the protection of nuclear material.

The United States recognizes that while the accomplishments of the international community in developing a robust legal counterterrorism regime are significant, there remains much work to be done. The 18 universal counterterrorism instruments are only effective if they are widely ratified and implemented. In this regard, we fully support efforts to promote ratification of these instruments, as well as efforts to promote their implementation. We draw particular attention to the six instruments concluded over the past decade—the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism (Nuclear Terrorism Convention), the 2005 Amendment to the Convention on the Physical Protection of Nuclear Material (CPPNM Amendment), the 2005 Protocols to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Protocols), and the 2010 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation and its Protocol. The work of the international community began with the negotiation and conclusion of those instruments. But that work will only be completed when those instruments are widely ratified and fully implemented.

The United States is advancing in its own efforts to ratify these instruments. We have been working closely with the U.S. Congress to pass legislation that would allow the United States to ratify the Nuclear Terrorism Convention, the CPPNM Amendment, and the SUA Protocols. As we undertake efforts to ratify these recent instruments, we urge other states not yet party to do likewise.

And as we move forward with our collective efforts to ratify and implement these instruments, the United States remains willing to work with other states to build upon and enhance the counterterrorism framework. Concerning the Comprehensive Convention on International Terrorism, we recognize that, despite the best efforts of the Ad Hoc Committee Chair and Coordinator, negotiations remain at an impasse on current proposals. We will listen carefully to the statements of other delegates at this session as we continue to grapple with these challenging issues.

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c. U.S. actions against support for terrorists

(1) U.S. targeted sanctions implementing UN Security Council resolutions

See Chapter 16.A.4.b.

(2) Foreign terrorist organizations

(i) New designations

In 2013, the Department of State announced the Secretary of State's designation of seven additional organizations and their associated aliases as Foreign Terrorist Organizations ("FTOs") under § 219 of the Immigration and Nationality Act: Ansar al-

Dine (78 Fed. Reg. 17,744 (Mar. 22, 2013)); Boko Haram and Ansaru (78 Fed. Reg. 68,500 (Nov. 14, 2013); see also www.state.gov/r/pa/prs/ps/2013/11/217509.htm); the al-Mulathamun Battalion, with its aliases, "Those Who Sign in Blood" battalion and "al-Murabitoun" (78 Fed. Reg. 76,887 (Dec. 19, 2013); see also www.state.gov/r/pa/prs/ps/2013/218880.htm); Ansar al-Shari'a in Tunisia (79 Fed. Reg. 2240 (Jan. 13, 2014)); Ansar al-Shari'a in Darnah (79 Fed. Reg. 2241 (Jan. 13, 2014)); Ansar al-Shari'a in Benghazi (79 Fed. Reg. 2241 (Jan. 13, 2014)). See Chapter 16.A.4.b. for a discussion of the simultaneous designation of these entities pursuant to Executive Order 13224.

The Department amended the designation of al-Qa'ida in the Arabian Peninsula to include the new alias, Ansar al-Shari'a ("AAS"). 77 Fed. Reg. 61,046 (Oct. 5, 2012). Likewise, the Department amended the designation of al-Qaida in Iraq ("AQI") twice in 2012 to add new aliases: Islamic State of Iraq (77 Fed. Reg. 4082 (Jan. 26, 2012)); Al-Nusrah Front, Jabhat al-Nusrah, Jabhet al-Nusra, The Victory Front, Al Nusrah Front for the People of the Levant (77 Fed. Reg. 73,732 (Dec. 11, 2012)).

U.S. financial institutions are required to block funds of designated FTOs or their agents within their possession or control; representatives and members of designated FTOs, if they are aliens, are inadmissible to, and in some cases removable from, the United States; and U.S. persons or persons subject to U.S. jurisdiction are subject to criminal prohibitions on knowingly providing "material support or resources" to a designated FTO. 18 U.S.C. § 2339B. See www.state.gov/j/ct/rls/other/des/123085.htm for background on the applicable sanctions and other legal consequences of designation as an FTO.

(ii) Reviews of FTO designations

During 2013, the Secretary of State continued to review designations of entities as FTOs consistent with the procedures for reviewing and revoking FTO designations in § 219(a) of the Immigration and Nationality Act, as amended by the Intelligence Reform and Terrorism Prevention Act of 2004 ("IRTPA"), Pub. L. No. 108-458, 118 Stat. 3638. See *Digest 2005* at 113–16 and *Digest 2008* at 101–3 for additional details on the IRTPA amendments and review procedures. The Secretary reviewed each FTO individually and determined that the circumstances that were the basis for the designations of the following FTOs have not changed in such a manner as to warrant revocation of the designations and the national security of the United States did not warrant revocation: Hizballah (78 Fed. Reg. 17,745 (Mar. 22, 2013)); Real Irish Republican Army (78 Fed. Reg. 26,101 (May 3, 2013)); Abu Sayyaf Group (78 Fed. Reg. 24,463 (Apr. 25, 2013)); Kurdistan Worker's Party (78 Fed. Reg. 69,927 (Nov. 21, 2013); Revolutionary People's Liberation Party/Front (78 Fed. Reg. 46,671 (Aug. 1, 2013)).

On May 13, 2013, the Secretary determined that the circumstances that were the basis for the designation of the Moroccan Islamic Combatant Group as an FTO have changed in such a manner as to warrant revocation of the designation. 78 Fed. Reg. 32,000 (May 28, 2013).

2. Narcotics

a. Majors list process

(1) International Narcotics Control Strategy Report

On March 4, 2013, the Department of State submitted the 2013 International Narcotics Control Strategy Report ("INCSR"), an annual report submitted to Congress in accordance with § 489 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. § 2291h(a). The report describes the efforts of key countries to attack all aspects of the international drug trade in calendar year 2012. Volume 1 of the report covers drug and chemical control activities and Volume 2 covers money laundering and financial crimes. The report is available at *www.state.gov/j/inl/rls/nrcrpt/2013/*.

(2) Major drug transit or illicit drug producing countries

On September 13, 2013, President Obama issued Presidential Determination 2013-14, "Memorandum for the Secretary of State: Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2014." Daily Comp. Pres. Docs., 2013 DCPD No. 00626, pp. 1–4. In this annual determination, the President named Afghanistan, The Bahamas, Belize, Bolivia, Burma, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, India, Jamaica, Laos, Mexico, Nicaragua, Pakistan, Panama, Peru, and Venezuela as countries meeting the definition of a major drug transit or major illicit drug producing country. A country's presence on the "Majors List" is not necessarily an adverse reflection of its government's counternarcotics efforts or level of cooperation with the United States. No new countries were added to the list in 2013. The President designated Bolivia, Burma, and Venezuela as countries that have failed demonstrably to adhere to their international obligations in fighting narcotrafficking. Simultaneously, the President determined that "support for programs to aid Burma and Venezuela is vital to the national interests of the United States," thus ensuring that such U.S. assistance would not be restricted during fiscal year 2014 by virtue of § 706(3) of the Foreign Relations Authorization Act, Fiscal Year 2003, Pub. L. No. 107-228, 116 Stat. 1424.

b. Interdiction assistance

During 2013 President Obama again certified, with respect to Colombia (Daily Comp. Pres. Docs., 2013 DCPD No. 00564, p. 1, Aug. 9, 2013) and Brazil (Daily Comp. Pres. Docs., 2013 DCPD No. No 00696, p. 1, Oct. 10, 2013), that (1) interdiction of aircraft reasonably suspected to be primarily engaged in illicit drug trafficking in that country's airspace is necessary because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and (2) the country has appropriate procedures

in place to protect against innocent loss of life in the air and on the ground in connection with such interdiction, which shall at a minimum include effective means to identify and warn an aircraft before the use of force is directed against the aircraft. President Obama made his determinations pursuant to § 1012 of the National Defense Authorization Act for Fiscal Year 1995, as amended, 22 U.S.C. §§ 2291–4, following a thorough interagency review. For background on § 1012, see *Digest 2008* at 114.

3. Trafficking in Persons

a. Trafficking in Persons report

On June 19, 2013, the Department of State released the 2013 Trafficking in Persons Report pursuant to § 110(b)(1) of the Trafficking Victims Protection Act of 2000 ("TVPA"), Div. A, Pub. L. No. 106-386, 114 Stat. 1464, as amended, 22 U.S.C. § 7107. The report covers the period April 2012 through March 2013 and evaluates the anti-trafficking efforts of countries around the world. Through the report, the Department determines the ranking of countries as Tier 1, Tier 2, Tier 2 Watch List, or Tier 3 based on an assessment of their efforts with regard to the minimum standards for the elimination of trafficking in persons as set out by the TVPA, as amended. The report lists 21 countries as Tier 3 countries, making them subject to certain restrictions on assistance in the absence of a Presidential national interest waiver. For details on the Department of State's methodology for designating states in the report, see *Digest 2008* at 115–17. The report is available at *www.state.gov/j/tip/rls/tiprpt/2013/index.htm*. Chapter 6.C.3.b. discusses the determinations relating to child soldiers.

In a briefing upon the release of the 2013 report, available at *www.state.gov/j/tip/rls/rm/2013/210906.htm*, Luis CdeBaca, Ambassador-at-Large for the State Department's Office To Monitor and Combat Trafficking in Persons, explained some of the findings in the 2013 report. That briefing is excerpted below. Secretary Kerry also delivered remarks upon release of the report (not excerpted herein), which are available at *www.state.gov/secretary/remarks/2013/06/210911.htm*.

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… in 188 countries in the world that we were able to look at this year—we see 30 countries which have achieved what we call Tier 1 on the report, and that's a country that, while certainly not having solved the trafficking problem—no country has—those are countries that are meeting those minimum standards.

What are the minimum standards? It's pretty easy. Is this illegal? Is holding someone in a condition of compelled service a crime? Is the punishment for that commensurate with other serious offenses like rape, kidnapping and extortion? Are there protections for the victims? Are there alternatives to deportation if the victim is a foreign victim? [Are] there prevention efforts going on on the part of the government?

And again, as we said, these are minimum standards. And so even the United States, who is one of those … Tier 1 countries—even the United States has a long way to go. And I think that what we've dedicated ourselves to doing is to looking at the needs of each tier. The Tier 1 countries, while doing an adequate job, need to sharpen victim identification, need to make sure that victims are able to walk on their path to the new life that they deserve. The Tier 2 countries, countries that are doing a lot but haven't quite gotten there yet, this year [there are] 92 of them. Those countries often are [prosecuting] cases, maybe have some shelters and some victim protection in place, but don't necessarily have long-term programs for victim rehabilitation, don't necessarily have robust and proactive law enforcement that's going out and really putting a dent in this.

Now, the Tier Two Watch List was originally created …in order to basically warn countries that they were on a downward trajectory. The "watch" in watch list literally is, "Watch out, you might be on your way to Tier 3." This year, there are 44 countries on the Tier 2 Watch List. And then there's Tier 3, which is the countries that are found by law not to be taking the affirmative steps necessary to fight human trafficking. And this year, there are 21 countries in that status.

This is the first year in which a law from 2008 has come into effect. [Congress] was concerned that countries were sitting on [the] Tier 2 Watch List and that maybe some countries were getting comfortable being on [the] Tier 2 Watch List, doing a minimum amount, not really doing all that much, not on the upward trajectory of a Tier 2 or a Tier 1 country. And so in 2008, in legislation, the Trafficking Victims Protection Act Reauthorization of 2008, which was sponsored by Chris Smith and others on the House side and sponsored by then-Senator Biden on the Senate side, moved to limit the number of years … a country could be on [the] Tier 2 Watch List. There is a waiver provision if a country has a written plan and resources dedicated towards meeting the concerns that are raised by the minimum standards in the [TIP] [R]eport, that we would be able to maintain them on that Watch List. But those waivers were only available for two years.

So this year, the 2013 report represents the first year in which the waiver possibility for a plan of action and resources is no longer available. And there were six countries that were facing that situation in this year's report. Those six countries are Azerbaijan, Iraq, the Congo, Russia, China, and Uzbekistan.

In looking at those countries, applying the … law, it was apparent …that three of those countries, Azerbaijan, the Congo, and Iraq—that we'd seen quite a bit of progress. For the first time now in Iraq, a new law [has] been passed, an anti-trafficking unit [has been] established in the Ministry of Interior, even going back and going into the women's prisons and screening people who had been convicted of other offenses, identifying 16 victims through that method and being able to get them out of prison, where they'd been unjustly punished.

In Azerbaijan, [this year there were] the first-ever forced labor prosecutions; an understanding and an increased commitment on the part of the government to address this [issue]. In the Congo, a country where, as most people who have been to Brazzaville will testify to, the reach of law enforcement, the reach of rule of law does not go that far outside of capital, and yet we were able to see for the first time active law enforcement responses in that country, with traffickers actually being brought to justice.

And so [in] those three countries, we saw a rise in the tier ranking on the merits to Tier 2, off of the Watch List. In the other countries that were subject to this provision for the first time, the automatic downgrade provision, of China, Russia, and Uzbekistan, we didn't see that same

kind of forward progress. We continue to have concerns about victim care and the need for more aggressive victim identification and assistance. For instance, in … China, the national plan of action that recently came out gives us, I think, a good path forward. It came out, however, in April, which is after the reporting year ended, and was not able to be credited in this year's report. And plans of action and promises of future action on the part of a government are something that is typically credited as part of a Tier 2 Watch List designation, which, as I mentioned earlier, was no longer available to China for this year.

We look forward to working with the Chinese and others on this national plan of action. We come across Chinese victims here in the United States, and our embassies actually come across Chinese victims in countries around the world. And we have gone out of our way to help them, to make sure that they are safe, make sure that they have a voice in the process. And we'll continue to work with the Chinese Government on seeing the results that will hopefully come out of that national plan of action.

And finally, [there is] Uzbekistan. As many of you may be familiar with, there's been an ongoing issue in Uzbekistan with the government's direct involvement in this problem: the mobilization of children and adults into forced labor in the cotton harvest each fall. This is something that we've raised with Uzbekistan in a number of fora. It's something that Assistant Secretary Bob Blake has been working very hard on. …

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b. Presidential determination

Consistent with § 110(c) of the Trafficking Victims Protection Act, as amended, 22 U.S.C. § 7107, the President annually submits to Congress notification of one of four specified determinations with respect to "each foreign country whose government, according to [the annual Trafficking in Persons report]—(A) does not comply with the minimum standards for the elimination of trafficking; and (B) is not making significant efforts to bring itself into compliance." The four determination options are set forth in § 110(d)(1)–(4).

On September 17, 2013, President Obama issued a memorandum for the Secretary of State, "Presidential Determination With Respect to Foreign Governments' Efforts Regarding Trafficking in Persons." The memorandum for the Secretary of State is available at *www.state.gov/j/tip/rls/other/2013/217567.htm*, with the memorandum of justification with regard to the determination for each country. The President's memorandum conveys determinations concerning the 21 countries that the 2013 Trafficking in Persons Report lists as Tier 3 countries. See Chapter 3.B.3.a. *supra* for discussion of the 2013 report.

The Trafficking Victims Protection Act further requires that the President's notification be accompanied by a certification by the Secretary of State regarding certain types of foreign assistance ("covered assistance") that "no [such covered] assistance is intended to be received or used by any agency or official who has participated in, facilitated, or condoned a severe form of trafficking in persons." Secretary Kerry signed the required certification as to all 21 countries place on the Tier 3 in the 2013 Report on September 3, 2013. Prior to obligating or expending covered

assistance, relevant bureaus in the State Department are required to take appropriate steps to ensure that all assistance is provided in accordance with the Secretary's certification.

4. Money Laundering

a. Institutions of primary money laundering concern

(1) Rmeiti Exchange (Lebanon)

On April 25, 2013, the Department of the Treasury, Financial Crimes Enforcement Network ("FinCEN") issued notice of its finding under § 311 of the USA PATRIOT Act, Pub. L. 107-56, that Kassem Rmeiti & Co. For Exchange ("Rmeiti Exchange") is a financial institution operating outside the United States that is of primary money laundering concern. 78 Fed. Reg. 24,593 (Apr. 25, 2013). Based on this finding, FinCEN also issued a notice of proposed rulemaking under § 311. 78 Fed. Reg. 24,576 (Apr. 25, 2013). The rule proposed would impose "both the first special measure (31 U.S.C. 5318A(b)(1)) and the fifth special measure (31 U.S.C. 5318A(b)(5))" against Rmeiti Exchange. The first special measure imposes requirements with respect to recordkeeping and reporting of certain financial transactions. The fifth special measure prohibits or conditions the opening or maintaining of correspondent or payable-through accounts for Rmeiti Exchange. On April 23, 2013, FinCEN imposed the first special measure by temporary order to immediately address the threat to the U.S. financial system. FinCEN had previously determined that another bank in Lebanon, Lebanese Canadian Bank ("LCB"), was of primary money laundering concern. *Digest 2011* at 61-65. Excerpts below from the notice of finding explain the determination with regard to Rmeiti Exchange (with footnotes omitted).

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III. The Extent to Which Rmeiti Exchange Has Been Used To Facilitate or Promote Money Laundering in or Through Lebanon

In finding that Rmeiti Exchange is a financial institution of primary money laundering concern, FinCEN reviewed the extent to which Rmeiti Exchange facilitates or promotes money laundering and determined that Rmeiti Exchange, its ownership, management, and associates are involved in illicit activity that includes the same trade-based money laundering activities conducted by U.S.-designated narcotics kingpin Ali Mohamed Kharroubi and Elissa Exchange, facilitate money laundering by other Lebanese exchanges on behalf of drug traffickers, and provide financial services to Hizballah.

A. Rmeiti Exchange Engages in Trade-Based Money Laundering for U.S.-Designated Narcotics Kingpin Ali Mohamed Kharroubi and Elissa Exchange

According to information available to the U.S. Government, Rmeiti Exchange engages in auto sale-related financial transactions working with [Specially Designated Narcotics

Trafficker or] SDNT Ali Mohamed Kharroubi to send funds to U.S. auto dealers as part of a trade-based money laundering scheme. Before and after the January 2011 Treasury designation of Ali Mohamed Kharroubi and Elissa Exchange and FinCEN's Section 311 Action against LCB which exposed the use of LCB accounts by Kharroubi and his company, Elissa Exchange, to launder drug proceeds for the Joumaa drug trafficking organization through the purchase and export of used cars from the United States, Rmeiti Exchange and its management processed structured, regular, round-number, large-denomination international wire transfers for the purchase of vehicles in the United States. The funds often originated from unknown individuals in high-risk money laundering regions and were sent to auto auction companies and used car dealers, some of which have no physical presence or verifiable address.

1. Rmeiti Exchange Engages in Trade-Based Money Laundering Activity With Narcotics Traffickers

Rmeiti Exchange and its management facilitate extensive transactions for known money launderers and drug traffickers. Prior to Treasury's Kingpin designation and FinCEN's LCB 311 Action, Kassem Rmeiti, through Rmeiti Exchange, routinely processed structured international wire transfers from its accounts at LCB and other banks to many of the same U.S.-based car dealerships that received funds from Elissa Exchange and were subsequently named in the [U.S. District Court for the Southern District of New York, or] SDNY Complaint as participants in the Joumaa network's money laundering scheme. In fact, between 2008 and March 2011, Rmeiti Exchange and its owner, provided at least $25 million in large, round dollar, and repetitive payments to U.S.-based car dealers and exporters, including more than $22 million from accounts it held at LCB. Many of the used car dealers that received payments from Rmeiti Exchange were later named in the SDNY Complaint for receiving funds from the Joumaa network.

2. Rmeiti Exchange Engages in Trade-Based Money Laundering Activity With Individuals the U.S. Government Has Designated as Narcotics Traffickers

After SDNT Ali Mohamed Kharroubi's network was exposed in the Treasury and Department of Justice actions, the network adapted its business practices and utilized other exchange houses which they could control or otherwise use to continue sending funds to used car dealerships in the United States, in particular Rmeiti Exchange. After the LCB 311 Action in February 2011, Rmeiti Exchange companies continued to make structured international wire payments to U.S. car dealers and companies for car purchases in a manner representative of trade-based money laundering, and a Rmeiti Exchange company was specifically used to facilitate such payments on behalf of Treasury-designated narcotics trafficker Ali Kharroubi. According to U.S. Government information, in February 2011 Ali Mohamed Kharroubi directed Kassem Rmeiti to create the Trading African Group (TAG) in Benin so that Kharroubi could continue making international wire transfers for U.S. car purchases that avoided U.S. Government scrutiny. Further, by the fall of 2011, former Elissa Exchange employees were working for TAG, and Kassem Rmeiti was paying Kharroubi about 30-40% of TAG's profits.

TAG provided more than $1.7 million to U.S. car dealers and exporters between March and October 2011. These payments consisted of structured, regular, large-denomination international wire payments in a manner representative of trade-based money laundering, and included at least one U.S. car dealer named in the SDNY Complaint as receiving car purchase payments from Elissa Exchange as part of the money laundering scheme alleged in the Complaint. The U.S. car dealers also received multiple wire transfers from individuals and businesses in regions considered high-risk for trade-based money laundering, which funded

purchases of cars that were then shipped to Lebanon and likely Benin. The sources of some funds were unknown, and the recipients had addresses that could not be verified or appeared to be a residence.

3. Following U.S. Government Actions in 2011, Rmeiti Exchange Adapted Its Trade-Based Money Laundering Activity To Conduct Transactions Through Rmeiti's Other Businesses, Especially World Car Service LTD

Kassem Rmeiti also serves as a board member or executive and represents himself as the owner of World Car Service LTD, a.k.a., World Car Service AG, (WCS AG)--an international transport and shipping business located in Switzerland, which is believed to be an affiliate of World Car Service International Transport and Shipping Company (a.k.a., WCS SA) located in Benin. Between March 2011 and August 2012, WCS SA in Benin processed numerous international wire transfers totaling over $100,000 and referencing auto purchases or vehicles to U.S.-based individuals and businesses and one other individual involved in auto exports or sales. From 2011 to 2012, WCS SA in Benin provided over $2.2 million in large, round-dollar wire transfers to numerous U.S. car dealers and car exporters, one of which was named in the 2011 SDNY Complaint, and many of which had previously received over $2 million in dozens of large, round-dollar wire transfers from Rmeiti Exchange or TAG between early 2007 and mid-2011. This pattern of activity indicates that in 2011 Rmeiti shifted some transactions away from his exchange companies and TAG and began increasingly utilizing his WCS accounts for trade-based money laundering transactions with the same entities through 2012.

Additionally, Kassem Rmeiti has engaged in commingling of over $2.5 million among his several businesses, including WCS SA, WCS AG, STE Rmaiti SARL, and Kassem Rmeiti and Co. For Exchange between 2009 and 2012, which is consistent with money laundering indicators and techniques.

B. Rmeiti Exchange Facilitates or Promotes Money Laundering Activity With or on Behalf of Other Money Launderers and Drug Trafficking Organizations

In addition to involvement in the trade-based money laundering activities described above, Rmeiti Exchange and its management have conducted financial activities for other money laundering and drug trafficking organizations operating in both Europe and Africa. Between March 2011 and October 2012, Rmeiti Exchange, its management, and employees facilitated the movement of at least $1.7 million for known or suspected Beninoise and Lebanese money launderers and drug traffickers. This included Rmeiti Exchange and Kassem Rmeiti taking on large cash deposits, collection of bulk cash currency, issuance of cashier's checks, and facilitation of cross-border wire transfers on behalf of known and suspected money launderers, drug traffickers, and Hizballah affiliates.

1. Rmeiti Exchange Facilitates Payments for a Money Launderer Known To Be Affiliated With a Colombian Drug Trafficking Organization

Since at least 2010, Rmeiti Exchange has transferred funds on behalf of known or suspected money launderers and shared its office space and security resources as part of a large-scale money laundering scheme that involves the purchase and sale of used cars in the United States for export to West Africa. For example, following the seizure of over 8.7 million euro by European authorities related to a Colombian drug trafficking ring that imported cocaine into Europe and laundered the illicit proceeds through Lebanon and South America, a known money launderer of this organization with ties to Hizballah moved his operations to Kassem Rmeiti Exchange in the Dahieh area of Beirut. This money launderer continued to wire large dollar amounts to U.S.-based car dealers via a Rmeiti Exchange account prior to the LCB 311 Action.

Rmeiti Exchange facilitated money laundering for other entities engaged in trade-based money laundering. Rmeiti processed over $3 million in dozens of large, round-dollar international wire transfers to two entities, whose businesses engaged in transactions typical of used-car trade-based money laundering. The two entities received over $2 million in wire transfers for car purchases from entities in high-risk trade-based money laundering regions, including through another exchange house.

2. Rmeiti Exchange Actively Seeks Money Laundering Opportunities With Other Lebanese Exchange Houses and Precious Metal Dealers

Rmeiti Exchange owner Kassem Rmeiti has also worked with other Lebanese exchange houses, including Halawi Exchange, determined to be a financial institution operating outside of the United States that is of primary money laundering concern on April 22, 2013, to facilitate money laundering activities. For example, Rmeiti Exchange, Halawi Exchange, and other exchange houses sent over $9 million in dozens of round-number, large-denomination international wire transfers from unknown sources to the same U.S. car shipping business from 2007 through 2010. Rmeiti Exchange and Halawi Exchange have facilitated financial activity on behalf of a money launderer involved in collecting illicit drug proceeds. Kassem Rmeiti has worked with a separate Lebanese exchange house to coordinate currency transfers and courier shipments on behalf of various money launderers between mid-2011 and mid-2012. Benin-based suspected money launderer Kassem Rmeiti, the owner of Rmeiti Exchange, continues to actively seek money laundering opportunities in trade transactions. For example, Rmeiti sought the assistance of a Lebanon-based money launderer in April 2012, to begin selling African gold in Lebanon or Dubai. Rmeiti Exchange and its owners' and employees' willingness to work for a variety of criminal networks involved in drug trafficking and money laundering suggests that a venture into the import or export of gold, which is a high-risk industry for money laundering, will likely provide another source to commingle illicit funds for Ali Mohamed Kharroubi and others.

C. Rmeiti Exchange Facilitates or Promotes Money Laundering for Specially Designated Global Terrorist Hizballah

Rmeiti Exchange has also conducted money laundering activities for and provided financial services to Hizballah. Rmeiti Exchange used accounts it held at LCB to deposit bulk cash shipments generated by Hizballah through illicit activity in Africa and as of December 2011, Hizballah had replaced U.S.-designated Elissa Exchange owner Ali Kharroubi with Haitham Rmeiti--the manager/owner of STE Rmeiti--as a key facilitator for wiring money and transferring Hizballah funds. Rmeiti Exchange, through its owner, Kassem Rmeiti, owns Societe Rmaiti SARL (a.k.a. STE Rmeiti). These steps taken by Hizballah demonstrate its efforts to adapt after U.S. Government disruptive action, and illustrates the need for continued action against its financial facilitators.

* * * *

(2) Halawi Exchange (Lebanon)

Also on April 25, 2013, FinCEN issued notice of its finding under § 311 of the USA PATRIOT Act, Pub. L. 107-56, that Halawi Exchange Co. ("Halawi Exchange") is a financial institution operating outside the United States that is of primary money laundering concern. 78 Fed. Reg. 24,596 (Apr. 25, 2013). Based on this finding, FinCEN also issued a

notice of proposed rulemaking under § 311. 78 Fed. Reg. 24,584 (Apr. 25, 2013). The rule proposed would impose "both the first special measure (31 U.S.C. 5318A(b)(1)) and the fifth special measure (31 U.S.C. 5318A(b)(5))" against Halawi Exchange. The first special measure imposes requirements with respect to recordkeeping and reporting of certain financial transactions. The fifth special measure prohibits or conditions the opening or maintaining of correspondent or payable-through accounts for Halawi Exchange. On April 23, 2013, FinCEN imposed the first special measure by temporary order to immediately address the threat to the U.S. financial system. This determination was made in conjunction with the finding regarding Rmeiti Exchange, discussed above. Excerpts below from the notice of finding explain the determination with regard to Halawi Exchange (with footnotes omitted).

* * * *

III. The Extent to Which Halawi Exchange and Its Subsidiaries Have Been Used To Facilitate or Promote Money Laundering in or Through Lebanon

According to information available to the U.S. Government, Halawi Exchange, its subsidiaries, and their respective management, ownership, and key employees are engaged in illicit financial activity. A pattern of regular, round-number, large-denomination international wire transfers consistent with money laundering are processed through Halawi Exchange. Many of these transactions appear to be structured because they are separated into multiple smaller transactions for no apparent reason. Halawi Exchange facilitates transactions as part of a large-scale trade-based money laundering scheme that involves the purchase of used cars in the United States for export to West Africa. Additionally, Halawi Exchange, and its management, ownership, and key employees are complicit in providing money laundering services for an international narcotics trafficking and money laundering network that is affiliated with Hizballah.

A. Past and Current Association With Used Car Trade-Based Money Laundering Scheme

Halawi Exchange facilitates transactions for a network of individuals and companies which launder money through the purchase and sale of used cars in the United States for export to West Africa. In support of this network, management, ownership, and key employees of Halawi Exchange coordinate transactions--processed within and outside of Halawi Exchange--on behalf of Benin-based money launderers and their associates. A significant portion of the funds are intended for U.S.-based car dealerships for the purchase of cars which are then shipped to Benin.

As of late 2012, Halawi Exchange was primarily used by Benin-based Lebanese car lot owners to wire transfer money to their U.S. suppliers. The proceeds of car sales were hand-transported in the form of bulk cash U.S. dollars from Cotonou, Benin to Beirut, Lebanon via air travel and deposited directly into one of the Halawi Exchange offices, which allowed bulk cash deposits to be made without requiring documentation of where the money originated. Halawi Exchange, through its network of established international exchange houses, initiated wire transfers to the United States without using the Lebanese banking system in order to avoid scrutiny associated with Treasury's designations of Hassan Ayash Exchange, Elissa Exchange, and its LCB 311 Action. The money was wire transferred indirectly to the United States through countries that included China, Singapore, and the UAE, which were perceived to receive less

scrutiny by the U.S. Government.

Participants in this network have coordinated the movement of millions of dollars per month, a significant portion of which has moved through Halawi Exchange. For example, in early 2012, Halawi Exchange, its management, its ownership, or key employees were involved in arranging multiple wire transfers totaling over $4 million on behalf of this network. Additionally, as of mid-2012, central figures in this scheme planned to move $224 million worth of vehicle shipping contracts through this network via a Halawi-owned Benin-based car lot, which receives vehicle shipments from the United States. Mahmoud Halawi was heavily involved in the establishment of this car lot, which is run by Ahmed Tofeily, a Benin-based money launderer, and continues to be involved in its operations. This car lot was established six months after the SDNY Complaint. Additionally, Tofeily--a Halawi agent/employee--owns and operates a car lot in Benin named Auto Deal (AKA Ste Auto Deal, Societe Auto Deal) which purchases cars in Canada and exports them through the United States. Tofeily worked closely with Halawi Exchange and wired all of his money through it. This car lot--identified as maintaining no brick and mortar structures--has wired hundreds of thousands of dollars throughout 2012 from Benin to U.S.-based car dealerships.

From 2008 to 2011, Halawi Exchange, its management, and employees sent numerous international wire transfers to U.S.-based used car companies consistent with the practice of laundering money through the purchase of cars in the United States for export to West Africa. Ali Halawi--a partner at Halawi Exchange--is listed by name on many of these transfers. A large number of these transfers were sent through accounts at LCB, which has been identified by Treasury as a financial institution of primary money laundering concern under Section 311 for its role in facilitating the money laundering activities of Ayman Joumaa's international narcotics trafficking and money laundering network. Some of the U.S.-based car dealerships that received funds transfers from Halawi Exchange were later identified in the SDNY Complaint as participants in the Joumaa network's money laundering activities.

Joumaa's network moved illegal drugs from South America to Europe and the Middle East via West Africa and laundered hundreds of millions of dollars monthly through accounts held at LCB, as well as through trade-based money laundering involving consumer goods throughout the world, including through used car dealerships in the United States. This criminal scheme involved bulk cash smuggling operations and use of several Lebanese exchange houses that utilized accounts at LCB branches, as discussed in the LCB 311 Action.

Halawi Exchange has also worked with other Lebanese exchange houses, including Rmeiti Exchange, to facilitate money laundering activities. For example, Halawi Exchange, Rmeiti Exchange, and other exchange houses sent over $9 million in dozens of round-number, large-denomination international wire transfers from unknown sources to the same U.S. car shipping business from 2007 through 2010.

B. Past and Current Connection to Designated Narcotics Kingpins and Their Associates

SDNTs Ibrahim Chebli and Abbas Hussein Harb regularly coordinated and executed financial transactions--including bulk cash transfers--that were processed through the Halawi Exchange. Harb and Chebli were designated by Treasury in June 2012 pursuant to the Kingpin Act for collaboration with Joumaa in the movement of millions of dollars of narcotics-related proceeds. Harb's Columbia- and Venezuela-based organization has laundered money for the Joumaa network through the Lebanese financial sector. Additionally, Chebli used his position as the manager of the Abbassieh branch of Fenicia Bank in Lebanon to facilitate the movement of money for Joumaa and Harb.

C. Past and Current Connection to Another International Narcotics Trafficking and Money Laundering Network With Ties to Hizballah

Management and key employees at Lebanon-based Halawi Exchange and members of the Halawi family coordinate, execute, receive, or are otherwise involved in millions of dollars-worth of transactions for members of another international narcotics trafficking and money laundering network. For example, high-level management at Lebanon-based Halawi Exchange and members of the Halawi family were involved in the movement of over $4 million in late 2012 for this international narcotics trafficking and money laundering network. Additionally, Fouad Halawi, acting in his capacity as a senior official at Halawi Holding, was responsible for the receipt and transfer of funds for this narcotics trafficking and money laundering network and provided accounting services for its senior leadership. To avoid detection, the involved parties scheduled structured payments by splitting larger sums into smaller, more frequent transactions which they often moved through numerous high-risk jurisdictions.

This additional international narcotics trafficking and money laundering network has been involved in extensive international narcotics trafficking operations. For example, it is known to have trafficked heroin from Lebanon to the United States and hundred-kilogram quantities of cocaine from South America to Nigeria for distribution in Europe and Lebanon. It is also known to have trafficked cocaine out of Lebanon in multi-ton quantities. The head of this network has operated an extensive money laundering organization, including a series of offshore corporate shell companies and underlying bank accounts, established by intermediaries, to receive and send money transfers throughout the world. It has arranged the laundering of profits from large-scale narcotics trafficking operations. Transfers coordinated by this network have impacted the United States, Canada, Europe, the Middle East, Asia, Australia, and South America. This international narcotics trafficking and money laundering network is affiliated with Hizballah.

Additionally, Halawi Exchange is known to have laundered profits from drug trafficking and cocaine-related money laundering for a Hizballah leader and narcotics trafficker. Halawi Exchange has also been routinely used by other Hizballah associates as a means to transfer illicit funds.

* * * *

(3) Liberty Reserve (Costa Rica)

On June 6, 2013, FinCEN issued notice of its finding under § 311 of the USA PATRIOT Act, Pub. L. 107-56, that Liberty Reserve S.A. ("Liberty Reserve") is a financial institution operating outside the United States that is of primary money laundering concern. 78 Fed. Reg. 34,169 (June 6, 2012). Based on this finding, FinCEN also issued a notice of proposed rulemaking under § 311. 78 Fed. Reg. 34,008 (June 6, 2013). The rule proposed would impose the special measure authorized by section 5318A(b)(5) (the fifth special measure). The fifth special measure prohibits or conditions the opening or maintaining of correspondent or payable-through accounts for Liberty Reserve. Excerpts below from the notice of finding explain the determination with regard to Liberty Reserve (with footnotes omitted).

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II. The Extent to Which Liberty Reserve Has Been Used To Facilitate or Promote Money Laundering in or Through Costa Rica and Internationally

Liberty Reserve is a Web-based money transfer system, or "virtual currency." It is a financial institution currently registered in Costa Rica and has been operating since 2001. Liberty Reserve's system is structured so as to facilitate money laundering and other criminal activity, while making any legitimate use economically unreasonable. The Department of Justice is taking criminal action against Liberty Reserve and related individuals.

Liberty Reserve uses a system of internal accounts and a network of virtual currency exchangers to move funds. Operating under the domain name *www.libertyreserve.com*, it maintains accounts for registered users. Users fund their accounts by ordering a bank wire or money services business (MSB) transfer to the bank of a Liberty Reserve exchanger. Users can also fund Liberty Reserve accounts by depositing cash, postal money orders, or checks directly into the exchanger's bank account. The exchanger then credits a corresponding value to the user's Liberty Reserve account, denominated in "Liberty Reserve Dollars" or "Liberty Reserve Euros." Liberty Reserve claims to maintain Dollar for Dollar and Euro for Euro reserves to back their virtual currencies,

To withdraw funds, the user instructs Liberty Reserve to send funds from the user's Liberty Reserve account to a Liberty Reserve exchanger, which then sends a bank wire, MSB transfer, or other transfer method to the user's or recipient's bank account in U.S. dollars or other major currencies. The exchangers are independent MSBs operating around the world. They charge a commission on each transfer to and from the Liberty Reserve system.

Once funded, the Liberty Reserve virtual currency can be transferred among accounts within the Liberty Reserve system. The transfers are anonymous, and the recipient only sees the account number from which the funds were transferred. For an additional fee, even that information can be eliminated for greater anonymity.

A. History and Ownership

According to reporting of a Planetgold.com interview in 2003 with Arthur Budovsky, who founded the company, Liberty Reserve was then based in Nevis and began as a private exchange system for import/export businesses. In 2002, Budovsky and another individual, Vladimir Kats, set up several other companies, including GoldAge Inc., according to the New York County District Attorney's Office. GoldAge served as a prominent exchanger for E-Gold, a gold-based virtual currency system. E-Gold was charged with money laundering and operating an illegal MSB, and pled guilty in 2008. Similar to how Liberty Reserve operates, customers opened online GoldAge accounts with only limited identification documentation and then could choose their method of payment, including wire transfers, cash deposits, postal money orders, or checks, to GoldAge to buy digital gold-based currency. GoldAge customers could withdraw their funds by wire transfers to anywhere in the world or by having checks sent to an individual.

In March 2004, Liberty Reserve's Web site indicated that it was operating out of Brooklyn, New York. In May 2006, Liberty Reserve was re-registered in Costa Rica. In July 2006, Budovsky and Kats were indicted by the state of New York for operating an illegal money transmitting business, GoldAge, out of their Brooklyn apartments. By that date, the defendants had transmitted at least $30 million through GoldAge to digital currency accounts globally since 2002. Budovsky pled guilty and was sentenced to five years of probation.

* * * *

D. Liberty Reserve Is Regularly Used To Store, Transfer, and Launder Illicit Proceeds

Liberty Reserve is used extensively by criminals to store, transfer, and launder illicit proceeds, including through U.S. financial institutions. Information available to the U.S. government shows frequent wire transfer activity to or from Liberty Reserve that indicates money laundering, in that: (1) The legitimate business purpose, source of funds, and validity of the wire transactions could not be determined or verified; (2) little or no identifying information appeared in wire transaction records regarding the ultimate originators or beneficiaries such as addresses, telephone numbers, or identification numbers, with only Liberty Reserve in the "reference" field, suggesting an attempt to conceal the identities of the involved parties; (3) transactions involved unidentified entities located and/or banking in jurisdictions considered vulnerable or high-risk for money laundering activities; and (4) transactions involved large, round-dollar, repetitive international wire transfers sent to the same Liberty Reserve exchanger.

* * * *

b. Asset sharing agreement with Andorra

On February 14, 2013, the governments of the United States of America and the Principality of Andorra signed an agreement "Regarding the Sharing of Confiscated Proceeds and Instrumentalities of Crimes." Article 3 of the Agreement identifies the circumstances in which assets may be shared: when (1) assets are confiscated through cooperation by the other Party; (2) assets are held due to an order issued by the other Party; (3) victims of the conduct underlying confiscation are identifiable and assets are placed in the custody of the other Party. Article 4 relates to requests for sharing of assets. Articles 5 and 6 relate to the method of sharing and the terms of payment.

c. Asset sharing agreement with Panama

On October 22, 2013, the United States and the Republic of Panama signed an agreement regarding the sharing of assets that were forfeited in cases prosecuted in federal court in New York against Speed Joyeros and Argento Vivo for violations of anti-money laundering provisions in U.S. law. The prosecution resulted in the forfeiture of over $52 million. Under the agreement, over $36 million will be transferred to Panama, due to the valuable cooperation the Republic of Panama provided in the prosecution. The agreement entered into force upon signature and was concluded in accordance with the asset forfeiture cooperation provision (Article 14, paragraph 2) in the Treaty between the United States and the Republic of Panama on Mutual Assistance in Criminal Matters, signed April 11, 1991, and entered into force September 6, 1995.

5. Organized Crime

a. Transnational Organized Crime Rewards Program

As discussed in section 3.C.1.a., *infra*, President Obama signed the Department of State Rewards Program Update and Technical Corrections Act of 2012, S. 2318, on January 15, 2013. The president's signing statement explained, "This legislation will enhance the ability of the U.S. Government to offer monetary rewards for information that leads to the arrest or conviction of foreign nationals accused by international criminal tribunals of atrocity-related crimes and of individuals involved in transnational organized crime." Daily Comp. Pres. Docs., 2013 DCPD No. 00016, p. 1. In addition to expanding the scope of the rewards program for information about those indicted by international tribunals, the legislation creates a new Transnational Organized Crime Rewards Program. As described in a State Department media note released on January 16, 2013, and available at *www.state.gov/r/pa/prs/ps/2013/01/202902.htm*:

> The new program will build on the success of the existing Narcotics Rewards Program by authorizing rewards for information leading to the arrest or conviction of significant members of transnational criminal organizations involved in activities beyond narcotics trafficking that threaten national security, such as human trafficking, and trafficking in arms or other illicit goods.

On November 13, 2013, the Secretary of State announced the first reward offer under the new program for information leading to the dismantling of a transnational criminal organization. A November 13 press statement, available at *www.state.gov/secretary/remarks/2013/11/217558.htm*, explains the reward offer:

> The involvement of sophisticated transnational criminal organizations in wildlife trafficking perpetuates corruption, threatens the rule of law and border security in fragile regions, and destabilizes communities that depend on wildlife for biodiversity and eco-tourism. Profits from wildlife trafficking, estimated at $8–10 billion per year, fund other illicit activities such as narcotics, arms, and human trafficking.
>
> That is why the Department of State is offering a reward of up to $1 million for information leading to the dismantling of the Xaysavang Network.
>
> Based in Laos—with affiliates in South Africa, Mozambique, Thailand, Malaysia, Vietnam, and China—the Xaysavang Network facilitates the killing of endangered elephants, rhinos, and other species for products such as ivory.
>
> Several major seizures of illegal wildlife products have been linked to the Xaysavang Network.

b. Sanctions Program

See Chapter 16 for a discussion of sanctions related to transnational organized crime.

6. Corruption

Conference of States Parties to the UN Convention against Corruption

As explained in a November 25, 2013 State Department media note available at *www.state.gov/r/pa/prs/ps/2013/11/218038.htm*, the U.S. Department of State led the U.S. delegation to the November 25–29 Conference of States Parties ("COSP") to the UN Convention against Corruption ("UNCAC") in Panama City, Panama. The United States is one of 168 States Parties to the UNCAC.

7. Piracy

a. Overview

On April 20, 2013, Andrew J. Shapiro, Assistant Secretary of State for Political-Military Affairs, testified before the U.S. House Committee on Transportation and Infrastructure's Subcommittee on Coast Guard and Marine Transportation. Mr. Shapiro's statement is excerpted below and available at *www.state.gov/t/pm/rls/rm/2013/207361.htm*.

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I would like to briefly outline our approach to tackling piracy off the coast of Somalia.

The Obama administration developed and pursued an integrated multi-dimensional approach to combat piracy. The overriding objective of which, was to make sure that piracy didn't pay. Piracy above all is a business. It is based on the potential to make money by preying on the vast supply of ships that pass through the waters off Somalia. What we have done is made it so the pirate's business model was no longer profitable. Pirates today can no longer find helpless victims like they could in the past and pirates operating at sea now often operate at a loss.

This has truly been an international and an inter-agency effort. I will let my colleagues speak in more detail about the remarkable international naval effort off the coast of Somalia, which has been a critical component of our efforts to combating piracy. The naval effort has helped create a protected transit corridor and has helped ships in need and deterred pirate attacks. However, there is often just too much water to patrol. While naval patrols are an absolutely essential component of any effective counter-piracy strategy, we recognized that we needed to broaden our efforts.

First, the United States has helped lead the international response and galvanize international action. …

All countries connected to the global economy have an interest in addressing piracy. … We therefore sought to make this a collective effort and build new kinds of partnerships and coalitions.

In January 2009, the United States helped establish the Contact Group on Piracy off the Coast of Somalia, which now includes over 80 nations and international, and industry organizations bound together on an ad hoc and purely voluntary basis. The Contact Group meets frequently to coordinate national and international counter-piracy actions. The Contact Group has become an essential forum. It helps galvanize action and coordinate the counter-piracy efforts of states, as well as regional and international organizations. Through the Contact Group, the international community has been able to coordinate multi-national naval patrols, work through the legal difficulties involved in addressing piracy, and cooperate to impede the financial flows of pirate networks. While we don't always agree on everything at the Contact Group, we agree on a lot, and this coordinated international engagement has spawned considerable international action and leveraged resources and capabilities.

Second, the United States has sought to empower the private sector to take steps to protect themselves from attack. This has been perhaps the most significant factor in the decline of successful pirate attacks and here too our diplomatic efforts have played a critical role.

We have pushed the maritime industry to adopt so-called Best Management Practices—which include practical measures, such as: proceeding at full-speed through high risk areas and erecting physical barriers, such as razor wire. The U.S. government has required U.S.-flagged vessels sailing in designated high-risk waters to fully implement these measures. These measures have helped harden merchant ships against pirate attack.

But perhaps the ultimate security measure a commercial ship can adopt is the use of privately contracted armed security teams. These teams are often made up of former members of various armed forces, who embark on merchant ships and guard them during transits through high risk waters. The use of armed security teams has been a game changer in the effort to combat piracy. To date, not a single ship with armed security personnel aboard has been successfully pirated.

For our part, the U.S. government led by example. Early on in the crisis we permitted armed personnel aboard U.S.-flagged merchant vessels in situations where the risk of piracy made it appropriate to do so. We also made a concerted diplomatic effort to encourage port states to permit the transit of armed security teams. This included working with countries to address the varying national legal regimes, which can complicate the movement of these teams and their weapons from ship-to-ship or ship-to-shore. American Ambassadors, Embassy officials, and members of our counter-piracy office at the State Department pressed countries on this issue. I myself, in meetings with senior officials from key maritime states have made the case that permitting armed personnel aboard ships is an effective way to reduce successful incidents of piracy. U.S. diplomatic efforts have therefore been critical to enabling the expanded use of armed personnel.

Third, we have sought to deter piracy through effective apprehension, prosecution and incarceration of pirates and their networks. Today, over 1,000 pirates are in custody in 20 countries around the world. Most are, or will be, convicted and sentenced to lengthy prison terms. The United States has encouraged countries to prosecute pirates and we have supported efforts to increase prison capacity in Somalia. We have also sought to develop a framework for prisoner transfers so convicted pirates serve their sentence back in their home country of Somalia.

But as piracy evolved into an organized transnational criminal enterprise, it became increasingly clear that prosecuting low-level pirates at sea was not on its own going to significantly change the dynamic. We also needed to target pirate kingpins and pirate networks. As any investigator who works organized crime will tell you—we need to follow the money.

This focus is paying off. Today, we are collaborating with law enforcement and the intelligence community, as well as our international partners like Interpol, to detect, track, disrupt, and interdict illicit financial transactions connected to piracy and the criminal networks that finance piracy. We have also helped support the creation of the Regional Anti-Piracy Prosecution and Coordination Center in the Seychelles. This Center hosts multinational law enforcement and intelligence personnel who work together to produce evidentiary packages that can be handed off to any prosecuting authority in a position to bring charges against mid-level and top-tier pirates.

This is having an impact. A number of Somali pirate leaders have publicly announced their "retirement" or otherwise declared their intention to get out of the business. Needless to say we and our international partners remain committed to apprehending and convicting these pirate leaders. But it does show they are feeling the impact of our efforts.

Lastly, the most durable long-term solution to piracy is the re-establishment of stability in Somalia. The successful Somali political transition in 2012 that put in place a new provisional constitution, new parliament, and a new president is clearly a step in the right direction, but much remains to be done. Supporting the emergence of effective and responsible governance in Somalia will require continued, accountable assistance to the Somali government to build its capacity to deal with the social, legal, economic, and operational challenges it faces. Once Somalia is capable of policing its own territory and its own waters, piracy will fade away. To that end, the United States continues to support the newly established government in Mogadishu.

The comprehensive, multilateral approach that we have pursued has helped turn the tide on piracy and has provided an example of how the U.S. government and the international community can respond to transnational threats and challenges in the future. …

* * * *

b. International support for efforts to bring suspected pirates to justice

(1) United Nations

On November 18, 2013, the UN Security Council adopted resolution 2125, its annual resolution on piracy off the coast of Somalia. U.N. Doc. S/RES/2125 (2013). The resolution notes the significant decrease in reported incidents of piracy, renews authorizations in previous resolutions on piracy, and repeats the calls to criminalize, prosecute, support Somalia in its counter-piracy efforts, and in other ways combat piracy.

(2) Contact Group on Piracy off the Coast of Somalia

In 2013, the United States served as chair of the Contact Group on Piracy off the Coast of Somalia ("CGPCS" or "Contact Group"). See *Digest 2009* at 464-67 regarding the creation of the CGPCS and the website of the CGPCS, *www.thecgpcs.org*, for more information. The fourteenth plenary session of the CPCS was held on May 1, 2013. Communiques released at the conclusion of each session are available at *www.thecgpcs.org/plenary.do?action=plenaryMain#*. The U.S. Department of State issued quarterly updates on the CGPCS as fact sheets from the Bureau of Political-Military Affairs. The first quarterly update for 2013, available at *www.state.gov/t/pm/rls/fs/2013/207651.htm*, includes the following:

> On January 25, the EU Naval Force vessel FS SURCOUF transferred 12 suspected pirates to authorities in Mauritius for prosecution. The French naval frigate captured the suspected pirates after an attack on a merchant vessel off Somalia's coast earlier that month.
>
> On February 25, the EU Naval Force frigate HNLMS DE RUYTER transferred nine suspected pirates to authorities in the Republic of Seychelles. The suspects were captured aboard two skiffs after an alarm report from a merchant vessel on February 19.
>
> Piracy Trials
>
> On February 27, a federal jury in Norfolk, Virginia convicted five Somali men of piracy for the 2010 attack on the USS ASHLAND. A piracy conviction in the United States carries a mandatory life sentence.
>
> Trials have been proceeding in the region for 16 suspected pirates detained in April 2012 by the Danish naval vessel ABSALON, operating as part of NATO's Operation OCEAN SHIELD. A court in Seychelles sentenced three of the pirates to prison terms of 24 years and a fourth to 16 years. Denmark collaborated with Pakistan to secure Pakistani fishermen held hostage by the pirates to serve as witnesses in court. The next step will be to transfer the convicted pirates to serve their sentences in their home country, Somalia.

The second quarterly report, available at *www.state.gov/t/pm/rls/fs/2013/212140.htm*, likewise contains updates on prosecutions and apprehensions:

> • On July 8, a federal jury in Norfolk, Virginia convicted three Somali pirates of the 2011 murder of four Americans aboard the yacht QUEST off the coast of East Africa; sentencing proceedings will begin later in July. Eleven of the pirates who attacked the QUEST pleaded guilty in federal court in 2011 and were given life

sentences. The onshore negotiator working for the pirates also received multiple life sentences.

• On June 10, a Kenyan court sentenced nine Somali citizens each to five years in prison after finding them guilty of violently hijacking the MV MAGELLAN STAR in the Gulf of Aden in September 2010. The court issued the relatively short prison terms in recognition of time served.

• On July 2, seven suspected pirates apprehended by U.S. forces in February 2009 were convicted in Kenya for the attempted hijacking of the MV POLARIS and sentenced to four years imprisonment.

• The UN Office on Drugs and Crime (UNODC) provided a Universal Forensic Extraction Device (UFED) to Tanzanian authorities in support of that country's two ongoing piracy trials. The UFED enables the Tanzanian police's Cyber Crime Unit to develop its capability to extract information from the phones of suspected pirates and those suspected of other transnational organized crimes.

Apprehensions at Sea

• On June 5, EU Naval Force warship HSwMS CARLSKRONA and NATO counter-piracy Dutch warship HNLMS VAN SPEJIK rescued fourteen Indian sailors after Somali pirates abandoned their captured dhow in the Gulf of Aden

Prisoner Transfers

• In Seychelles, the UNODC supported talks for the next round of prisoner transfers to Somaliland and Puntland. A total of 23 convicted Somali piracy prisoners consented to be transferred immediately, while two elected to wait for their appeals to be heard. UNODC also supported arrangements for the return of one Somali juvenile to his family after completing his sentence for piracy and subject to his informed consent, as well as funding of defense lawyers for the last group of nine suspected pirates detained by EUNAVFOR.

The third quarterly update, available at *www.state.gov/t/pm/rls/fs/2013/215719.htm*, includes the following information about piracy prosecutions:

• On October 12, Belgian police arrested Mohamed Abdi Hassan at Brussels airport. Hassan, whose nickname, Afweyne, means "Big Mouth," and whom the United Nations has called "one of the most notorious and influential leaders" of a major Somali pirate organization. Hassan is believed responsible for the hijacking of dozens of commercial vessels from 2008 to 2013. In a sting operation, Hassan was lured from Somalia to Belgium with promises of work on a documentary about high-seas crime. Belgian authorities also arrested an accomplice, Mohammad Aden Tiiceey.

• Also on October 7, Spain began the trial of six Somalis accused of attacking the EU NAVFOR ship SPS PATINO in early January, 2012. Spain said the six apparently mistook the warship for a trawler and broke off an attack when the ship returned fire. The six claimed they were innocent fishermen.

• On October 7, Mauritius delayed the trial of 12 suspected Somali pirates due to the illness of one of the accused. The United Nations Office on Drugs and Crime (UNODC) had two interpreters there to translate in the courtroom. A third UNODC interpreter who was present for the translation of the defendants' statements in the investigation will be called as a prosecution witness.
• On October 5, the counter-piracy Force Commanders from Combined Maritime Forces (CMF), the EU Naval Force and NATO met at sea off the Somali Coast on board the EU Naval Force flagship, HNLMS JOHAN DE WITT. The meeting was to review the current and future situation concerning piracy in the Indian Ocean and to share information. Commodore Peter Lenselink from the Royal Netherlands Navy welcomed on board Commodore Jeremy Blunden from the Royal Navy (CMF) and Commodore Henning Amundsen from the Royal Norwegian Navy (NATO Operation Ocean Shield).
• On October 2, the Seychellois Supreme Court passed sentence on the 11 Somali pirates convicted on three counts of piracy against the M/V SUPER LADY. The adults were given a 16-year sentence for each charge (to run concurrently). The youngest of the group was given an 18 month sentence which, taking account of the time he has served meant he was released immediately. He was returned to his family in Somalia within one week. The 11 were captured by the Dutch Navy ship HNLMS VAN AMSTEL, operating under Operation ATALANTA.
• On September 19, a Tanzanian court found procedural problems in the trial of seven accused Somali pirates. The High Court in Dar es Salaam ordered a lower court to conduct proper committal proceedings in the trial against the seven, who are charged with attacking the oil exploration vessel M/V SAM S ALL-GOOD within Tanzania's waters. The Tanzanian navy captured the Somali suspects in October 2011.
• On September 10, Spain's National Court sentenced six Somali pirates to jail for attempting to kidnap the crew of a fishing boat. They will likely serve 40 years each. The pirates targeted the F/V IZURDIA in October 2012 while it was sailing in the Indian Ocean. A French Ship, the FS LA FAYETTE, working under EUNAVFOR's Operation ATALANTA, and the Dutch ship HNLMS ROTTERDAM, working under NATO's Operation OCEAN SHIELD, caught the pirates October 24, 2012.
• On September 5, a U.S. Appellate Court ordered pirate interpreter Ali Mohammed Ali returned to custody. The ruling came just 24 hours after a U.S. District Court Judge in Virginia freed Ali pending trial because he was held in pre-trial detention for 28 months.
• Also on September 2, the trial of nine defendants accused of involvement in the unsuccessful pirate attack on M/V ALBA STAR in February 2013 commenced in the Seychellois Supreme Court. Dutch naval officers from HNLMS DE RUYTER (operating under EUNAVFOR's Operation ATALANTA) as well as officers from the Spanish maritime aerial reconnaissance patrol gave evidence.

• On September 2, a Malaysian court sentenced seven Somali pirates to eight to 10 years imprisonment for shooting at Malaysian troops on board a tanker in Gulf of Aden. The pirates boarded the Malaysian-operated chemical tanker M/T BUNGA LAUREL in January of 2011. A Royal Malaysian Navy ship, the MT BUNGA MAS LIMA, captured the pirates a few hours later.
• A U.S. jury on August 2 recommended that three Somali pirates be sentenced to life in prison in the slayings of four Americans aboard the yacht QUEST off the coast of Africa. Formal sentencing is set for October and November. Eleven of the pirates who attacked the QUEST pleaded guilty in federal court in 2011 and were given life sentences. The onshore negotiator working for the pirates also received multiple life sentences.
• On July 23, the Seychellois Supreme Court convicted six Somali pirates accused of acts of piracy against the M/V BURHAN NOOR. Five of the six received sentences of 24 years. The other convicted pirate, aged 15, was sentenced to 12 years. The six were captured August 13, 2012, by the Dutch Navy ship HNLMS ROTTERDAM, working under NATO's Operation OCEAN SHIELD.
• On July 30, the Magistrates Court in Mombasa, Kenya delivered sentence in the M/V COURIER case. Nine pirates, apprehended by the German frigate RHEINLAND-PFALZ, working under EUNAVFOR's Operation ATALANTA, and the American destroy USS MONTEREY of CTF 151, on March 3, 2009, received sentences of five years which will start from the date of judgment.

The 15th Plenary of the Contact Group on Piracy off the Coast of Somalia was held in Djibouti, November 10-14, 2013. The State Department media note on the plenary is available at www.state.gov/r/pa/prs/ps/2013/11/217619.htm. Among other things, the media note mentions that there have been no successful pirate attacks on commercial vessels off the Horn of Africa in more than 18 months. The United States passed the chairmanship to the European Union for 2014.

c. U.S. prosecutions

Domestically, the United States continues to pursue the prosecution of captured individuals suspected in several pirate attacks. As of the end of 2013, the United States had pursued the prosecution of 28 suspected pirates in U.S. courts for their involvement in attacks on seven ships that were either U.S. flagged or related to U.S. interests. Prosecutions resulted in 27 defendants receiving convictions.

On August 2, 2013, three Somali pirates were sentenced to life in prison in the U.S. District Court for the Eastern District of Virginia for the 2011 murder of four U.S. citizens abducted on the yacht QUEST off the coast of East Africa. The State Department issued a press statement on August 7, 2013, welcoming the sentencing, available at www.state.gov/r/pa/prs/ps/2013/08/212809.htm. Eleven of the other pirates who attacked the QUEST previously pleaded guilty in federal court in 2011 and were also

sentenced to life in prison. The onshore negotiator working for the pirates was also convicted and received multiple life sentences as well.

(1) United States v. Ali*: aiding and abetting and conspiracy to commit piracy*

On June 11, 2013, the U.S. Court of Appeals for the District of Columbia reversed, in part, a district court's dismissal of charges of aiding and abetting piracy, conspiracy to commit piracy, and hostage taking. *United States v. Ali*, 718 F.3d. 929 (D.C. Cir. 2013). The district court found it critical that defendant's alleged actions as a hostage negotiator occurred on land and in territorial waters—not upon the high seas. The court of appeals held that prosecution for aiding and abetting piracy based on acts not committed on the high seas was consistent with U.S. and international law, but that prosecution for conspiracy to commit piracy was not consistent with international law. The court of appeals also held that prosecution of defendant for hostage taking was neither in violation of international law nor due process under the U.S. Constitution. Excerpts from the opinion of the court of appeals follow (with footnotes omitted).[*]

* * * *

In most cases, the criminal law of the United States does not reach crimes committed by foreign nationals in foreign locations against foreign interests. Two judicial presumptions promote this outcome. The first is the presumption against the extraterritorial effect of statutes: "When a statute gives no clear indication of an extraterritorial application, it has none." *Morrison v. Nat'l Austl. Bank Ltd.*, ––U.S. ––––, 130 S.Ct. 2869, 2878, 177 L.Ed.2d 535 (2010). The second is the judicial presumption that "an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains," *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118, 2 L.Ed. 208 (1804)—the so-called *Charming Betsy* canon. Because international law itself limits a state's authority to apply its laws beyond its borders, *see* RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW §§ 402–03, *Charming Betsy* operates alongside the presumption against extraterritorial effect to check the exercise of U.S. criminal jurisdiction. Neither presumption imposes a substantive limit on Congress's legislative authority, but they do constrain judicial inquiry into a statute's scope.

Piracy, however, is no ordinary offense. The federal piracy statute clearly applies extraterritorially to "[w]hoever, on the high seas, commits the crime of piracy as defined by the law of nations," even though that person is only "afterwards brought into or found in the United States." 18 U.S.C. § 1651. Likewise, through the principle of universal jurisdiction, international law permits states to "define and prescribe punishment for certain offenses recognized by the community of nations as of universal concern." RESTATEMENT (THIRD) OF FOREIGN

[*] Editor's note: After the court of appeals issued its decision, the case went to trial before a jury which resulted in acquittal of Mr. Ali on the piracy charges in late November 2013. The jury could not reach agreement on the charges of hostage taking, resulting in the district court declaring a mistrial on those charges in early December 2013. The U.S. government elected not to pursue the available retrial solely on the hostage taking charges.

RELATIONS LAW § 404; *see United States v. Yunis*, 924 F.2d 1086, 1091 (D.C.Cir.1991). And of all such universal crimes, piracy is the oldest and most widely acknowledged. *See, e.g.*, Kenneth C. Randall, *Universal Jurisdiction Under International Law*, 66 TEX. L.REV. 785, 791 (1988). "Because he commits hostilities upon the subjects and property of any or all nations, without any regard to right or duty, or any pretence of public authority," the pirate is "*hostis humani generis*," *United States v. Brig Malek Adhel*, 43 U.S. (2 How.) 210, 232, 11 L.Ed. 239 (1844)—in other words, "an enemy of the human race," *United States v. Smith*, 18 (5 Wheat.) U.S. 153, 161, 5 L.Ed. 57 (1820). Thus, "all nations [may punish] all persons, whether natives or foreigners, who have committed this offence against any persons whatsoever, with whom they are in amity." *Id.* at 162.

Universal jurisdiction is not some idiosyncratic domestic invention but a creature of international law. Unlike the average criminal, a pirate may easily find himself before an American court despite committing his offense on the other side of the globe. Ali's situation is a bit more complicated, though. His indictment contains no straightforward charge of piracy. Rather, the government accuses him of two inchoate offenses relating to piracy: conspiracy to commit piracy and aiding and abetting piracy.

On their face, both ancillary statutes apply generally and without exception: § 2 to "*[w]hoever* ... aids, abets, counsels, commands, induces or procures" the commission of "an offense against the United States," 18 U.S.C. § 2(a) (emphasis added), and § 371 to persons who "do any act to effect the object of the conspiracy" to "commit *any* offense against the United States," 18 U.S.C. § 371 (emphasis added). But so powerful is the presumption against extraterritorial effect that even such generic language is insufficient rebuttal. *See Small v. United States*, 544 U.S. 385, 125 S.Ct. 1752, 161 L.Ed.2d 651 (2005). That leaves both statutes ambiguous as to their application abroad, requiring us to resort to interpretive canons to guide our analysis.

Given this ambiguity in the extraterritorial scope of the two ancillary statutes, we consider whether applying them to Ali's actions is consistent with international law. Conducting this *Charming Betsy* analysis requires parsing through international treaties, employing interpretive canons, and delving into drafting history. Likewise, because the two ancillary statutes are "not so broad as to expand the extraterritorial reach of the underlying statute," *United States v. Yakou*, 428 F.3d 241, 252 (D.C.Cir.2005), we also conduct a separate analysis to determine the precise contours of § 1651's extraterritorial scope. Ultimately, Ali's assault on his conspiracy charge prevails for the same reason the attack on the aiding and abetting charge fails.

A. Aiding and Abetting Piracy

We begin with Ali's charge of aiding and abetting piracy. Aiding and abetting is a theory of criminal liability, not a separate offense, *United States v. Ginyard*, 511 F.3d 203, 211 (D.C.Cir.2008)—one that allows a defendant who "aids, abets, counsels, commands, induces or procures" commission of a crime to be punished as a principal, 18 U.S.C. § 2(a). "All that is necessary is to show some affirmative participation which at least encourages the principal offender to commit the offense, with all its elements, as proscribed by the statute." *United States v. Raper*, 676 F.2d 841, 850 (D.C.Cir.1982). From Ali's perspective, it is not enough that acts of piracy were committed on the high seas and that he aided and abetted them. Rather, he believes any acts of aiding and abetting he committed must themselves have occurred in extraterritorial waters and not merely supported the capture of the *CEC Future* on the high seas.

Ali's argument involves two distinct (though closely related) inquiries. First, does the *Charming Betsy* canon pose any obstacle to prosecuting Ali for aiding and abetting piracy? For

we assume, absent contrary indication, Congress intends its enactments to comport with international law. Second, is the presumption against extraterritoriality applicable to acts of aiding and abetting piracy not committed on the high seas?

1. Piracy and the *Charming Betsy* Canon

Section 1651 criminalizes "the crime of piracy as defined by the law of nations." Correspondence between the domestic and international definitions is essential to exercising universal jurisdiction. Otherwise, invocation of the magic word "piracy" would confer universal jurisdiction on a nation and vest its actions with the authority of international law. *See* Randall, *supra,* at 795. As a domestic matter, doing so may be perfectly legal. But because *Charming Betsy* counsels against interpreting federal statutes to contravene international law, we must satisfy ourselves that prosecuting Ali for aiding and abetting piracy would be consistent with the law of nations.

Though § 1651's invocation of universal jurisdiction may comport with international law, that does not tell us whether § 2's broad aider and abettor liability covers conduct neither within U.S. territory nor on the high seas. Resolving that difficult question requires examining precisely what conduct constitutes piracy under the law of nations. Luckily, defining piracy is a fairly straightforward exercise. Despite not being a signatory, the United States has recognized, via United Nations Security Council resolution, that the U.N. Convention on the Law of the Sea ("UNCLOS") "sets out the legal framework applicable to combating piracy and armed robbery at sea." S.C. Res.2020, U.N. Doc. S/Res/2020, at 2 (Nov. 22, 2011); *see United States v. Dire,* 680 F.3d 446, 469 (4th Cir.2012). According to UNCLOS:

> Piracy consists of any of the following acts:
>
> (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship ... and directed:
>
> (i) on the high seas, against another ship ... or against persons or property on board such ship ...;
>
> (ii) against a ship, ... persons or property in a place outside the jurisdiction of any State;
>
> (b) any act of voluntary participation in the operation of a ship ... with knowledge of facts making it a pirate ship ...;
>
> (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

UNCLOS, art. 101, Dec. 10, 1982, 1833 U.N.T.S. 397, 436. By including "intentionally facilitating" a piratical act within its definition of piracy, article 101(c) puts to rest any worry that American notions of aider and abettor liability might fail to respect the international understanding of piracy. One question remains: does international law require facilitative acts take place on the high seas?

Explicit geographical limits—"on the high seas" and "outside the jurisdiction of any state"—govern piratical acts under article 101(a)(i) and (ii). Such language is absent, however, in article 101(c), strongly suggesting a facilitative act need not occur on the high seas so long as its predicate offense has. *Cf. Dean v. United States,* 556 U.S. 568, 573, 129 S.Ct. 1849, 173 L.Ed.2d 785 (2009) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." (internal quotation marks omitted)). So far, so good; *Charming Betsy* poses no problems.

Ali endeavors nonetheless to impute a "high seas" requirement to article 101(c) by

pointing to UNCLOS article 86, which states, "The provisions of this Part apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State." 1833 U.N.T.S. at 432. Though, at first glance, the language at issue appears generally applicable, there are several problems with Ali's theory that article 86 imposes a strict high seas requirement on all provisions in Part VII. For one thing, Ali's reading would result in numerous redundancies throughout UNCLOS where, as in article 101(a)(i), the term "high seas" is already used, and interpretations resulting in textual surplusage are typically disfavored. *Cf. Babbitt v. Sweet Home Chapter of Communities for a Great Or.*, 515 U.S. 687, 698, 115 S.Ct. 2407, 132 L.Ed.2d 597 (1995). Similarly, many of the provisions to which article 86 applies explicitly concern conduct outside the high seas. *See, e.g.*, UNCLOS, art. 92(1), 1833 U.N.T.S. at 433 ("A ship may not change its flag during a voyage or while in a port of call...."); *id.* art. 100, 1833 U.N.T.S. at 436 ("All States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State."). Ali's expansive interpretation of article 86 is simply not plausible.

What does article 86 mean, then, if it imposes no high seas requirement on the other articles in Part VII of UNCLOS? After all, "the canon against surplusage merely favors that interpretation which *avoids* surplusage," not the construction substituting one instance of superfluous language for another. *Freeman v. Quicken Loans, Inc.*, ––– U.S. ––––, 132 S.Ct. 2034, 2043, 182 L.Ed.2d 955 (2012). We believe it is best understood as definitional, explicating the term "high seas" for that portion of the treaty most directly discussing such issues. Under this interpretation, article 86 mirrors other prefatory provisions in UNCLOS. Part II, for example, concerns "Territorial Sea and Contiguous Zone" and so opens with article 2's explanation of the legal status of a State's territorial sea. 1833 U.N.T.S. at 400. And Part III, covering "Straits Used for International Navigation," begins with article 34's clarification of the legal status of straits used for international navigation. 1833 U.N.T.S. at 410. Drawing guidance from these provisions, article 86 makes the most sense as an introduction to Part VII, which is titled "High Seas," and not as a limit on jurisdictional scope. *Cf. FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133, 120 S.Ct. 1291, 146 L.Ed.2d 121 (2000) ("It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." (internal quotation marks omitted)).

Thwarted by article 101's text, Ali contends that even if facilitative acts count as piracy, a nation's universal jurisdiction over piracy offenses is limited to high seas conduct. In support of this claim, Ali invokes UNCLOS article 105, which reads,

> On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed....

1833 U.N.T.S. at 437. Ali understands article 105's preface to govern the actual enforcement of antipiracy law—and, by extension, to restrict universal jurisdiction to the high seas—even if the definition of piracy is more expansive. In fact, Ali gets it backward. Rather than curtailing the categories of persons who may be prosecuted as pirates, the provision's reference to the high seas highlights the broad authority of nations to apprehend pirates even in international waters. His reading also proves too much, leaving nations incapable of prosecuting even those undisputed pirates they discover within their own borders—a far cry from "universal" jurisdiction. Article 105 is therefore no indication international law limits the liability of aiders

and abettors to their conduct on the high seas.

Ali's next effort to exclude his conduct from the international definition of piracy eschews UNCLOS's text in favor of its drafting history—or, rather, its drafting history's drafting history. He points to UNCLOS's origins in article 15 of the 1958 Geneva Convention on the High Seas, which closely parallels the later treaty's article 101. *See* Geneva Convention on the High Seas, art. 15, Apr. 29, 1958, 13 U.S.T. 2312, 450 U.N.T.S. 82. Article 15 was based in large part on a model convention compiled at Harvard Law School by various legal scholars, *see* 2 ILC YEARBOOK 282 (1956), who postulated that "[t]he act of instigation or facilitation is not subjected to the common jurisdiction unless it takes place outside territorial jurisdiction." Joseph W. Bingham et al., *Codification of International Law: Part IV: Piracy,* 26 AM. J. INT'L L. SUPP. 739, 822 (1932). Ali hopes this latter statement is dispositive.

Effectively, Ali would have us ignore UNCLOS's plain meaning in favor of eighty-year-old scholarship that may have influenced a treaty that includes language similar to UNCLOS article 101. This is a bridge too far. Legislative history is an imperfect enough guide when dealing with acts of Congress. *See Conroy v. Aniskoff*, 507 U.S. 511, 519, 113 S.Ct. 1562, 123 L.Ed.2d 229 (1993) (Scalia, J., concurring in the judgment) ("If one were to search for an interpretive technique that, *on the whole,* was more likely to confuse than to clarify, one could hardly find a more promising candidate than legislative history."). Ali's inferential chain compounds the flaws—and that even assumes a single intent can be divined as easily from the myriad foreign governments that ratified the agreement as from a group of individual legislators. Even were it a more feasible exercise, weighing the relevance of scholarly work that indirectly inspired UNCLOS is not an avenue open to us. Basic principles of treaty interpretation—both domestic and international—direct courts to construe treaties based on their text before resorting to extraneous materials. *See United States v. Alvarez–Machain,* 504 U.S. 655, 663, 112 S.Ct. 2188, 119 L.Ed.2d 441 (1992) ("In construing a treaty, as in construing a statute, we first look to its terms to determine its meaning."); Vienna Convention on the Law of Treaties, art. 32, May 23, 1969, 8 I.L.M. 679, 692, 1155 U.N.T.S. 331, 340. Because international law permits prosecuting acts of aiding and abetting piracy committed while not on the high seas, the *Charming Betsy* canon is no constraint on the scope of Count Two.

2. Piracy and the Presumption Against Extraterritorial Effect

Ali next attempts to achieve through the presumption against extraterritoriality what he cannot with *Charming Betsy.* Generally, the extraterritorial reach of an ancillary offense like aiding and abetting or conspiracy is coterminous with that of the underlying criminal statute. *Yakou,* 428 F.3d at 252. And when the underlying criminal statute's extraterritorial reach is unquestionable, the presumption is rebutted with equal force for aiding and abetting. *See United States v. Hill,* 279 F.3d 731, 739 (9th Cir.2002) ("[A]iding and abetting[ ] and conspiracy ... have been deemed to confer extraterritorial jurisdiction to the same extent as the offenses that underlie them."); *see also Yunis,* 924 F.2d at 1091 (analyzing underlying offenses under extraterritoriality canon but conducting no separate analysis with respect to conspiracy conviction). Ali admits the piracy statute must have some extraterritorial reach—after all, its very terms cover conduct outside U.S. territory—but denies that the extraterritorial scope extends to any conduct that was not itself perpetrated on the high seas.

We note, as an initial matter, that proving a defendant guilty of aiding and abetting does not ordinarily require the government to establish "participation in each substantive and jurisdictional element of the underlying offense." *United States v. Garrett,* 720 F.2d 705, 713 n. 4 (D.C.Cir.1983). A defendant could, for example, aid and abet "travel[ing] in foreign commerce

[ ] for the purpose of engaging in any illicit sexual conduct with another person," 18 U.S.C. § 2423(b), without himself crossing any international border. *Cf. Raper*, 676 F.2d at 850.

Ali's argument appears to be more nuanced. Ali claims the government seeks to use aider and abettor liability to expand the extraterritorial scope of the piracy statute beyond conduct on the high seas. Because § 1651 expressly targets crimes committed on the high seas, he believes Congress intended its extraterritorial effect—and, by extension, that of the aiding and abetting statute—to extend to international waters and no further. And, he claims, our opinion in *United States v. Yakou* supports this proposition by deciding that a foreign national who had renounced his legal permanent resident status could not be prosecuted for aiding and abetting under a statute applicable to " '[a]ny U.S. person, wherever located, and any foreign person located in the United States or otherwise subject to the jurisdiction of the United States.' " 428 F.3d at 243 n. 1 (quoting 22 C.F.R. § 129.3(a)). But this language makes clear the intention to limit U.S. criminal jurisdiction to certain categories of persons—a restriction employing broad aider and abettor liability would have frustrated. *See* 438 F.3d at 252. In other words, *Yakou* spoke to the sort of defendant Congress had in mind, while § 1651's reference to the high seas, in contrast, describes a category of conduct.

Thus, instead of thwarting some clearly expressed Congressional purpose, extending aider and abettor liability to those who facilitate such conduct furthers the goal of deterring piracy on the high seas—even when the facilitator stays close to shore. In fact, *Yakou* distinguished the offense at issue there from those crimes—like piracy—in which "the evil sought to be averted inherently relates to, and indeed requires, persons in certain categories." *Id.* In keeping with that principle, § 1651's high seas language refers to the very feature of piracy that makes it such a threat: that it exists outside the reach of any territorial authority, rendering it both notoriously difficult to police and inimical to international commerce. *See* Eugene Kontorovich, *Implementing* Sosa v. Alvarez–Machain: *What Piracy Reveals About the Limits of the Alien Tort Statute*, 80 NOTRE DAME L.REV. 111, 152–53 (2004). As UNCLOS § 101(c) recognizes, it is self-defeating to prosecute those pirates desperate enough to do the dirty work but immunize the planners, organizers, and negotiators who remain ashore.

Nor does the Supreme Court's recent decision in *Kiobel v. Royal Dutch Petroleum Co.*, – — U.S. ——, 133 S.Ct. 1659, 185 L.Ed. 2d 671 (2013), change the equation. Reiterating that "[w]hen a statute provides for some extraterritorial application, the presumption against extraterritoriality operates to limit that provision to its terms," the Court rejected the notion that "because Congress surely intended the [Alien Tort Statute] to provide jurisdiction for actions against pirates, it necessarily anticipated the statute would apply to conduct occurring abroad." *Id.* at 1667 (quoting *Morrison*, 130 S.Ct. at 2883). Ali contends that § 1651's high seas requirement is similarly limiting, and that the presumption against extraterritoriality remains intact as to acts done elsewhere.

Even assuming Ali's analogy to *Kiobel* is valid, he overlooks a crucial fact: § 1651's high seas element is not the only evidence of the statute's extraterritorial reach, for the statute references not only "the high seas" but also "the crime of piracy as defined by the law of nations." As explained already, the law of nations specifically contemplates, within its definition of piracy, facilitative acts undertaken from within a nation's territory. *See supra* Subsection II.A.1. By defining piracy in terms of the law of nations, § 1651 incorporated this extraterritorial application of the international law of piracy and indicates Congress's intent to subject extraterritorial acts like Ali's to prosecution.

Why then does § 1651 mention the high seas at all if "the law of nations," which has its own high seas requirements, is filling in the statute's content? Simply put, doing so fits the international definition of piracy—a concept that encompasses both crimes on the high seas and the acts that facilitate them—into the structure of U.S. criminal law. To be convicted as a principal under § 1651 alone, one must commit piratical acts on the high seas, just as UNCLOS article 101(a) demands. But applying aider and abettor liability to the sorts of facilitative acts proscribed by UNCLOS article 101(c) requires using § 1651 and § 2 in tandem. That is not to say § 1651's high seas requirement plays no role in prosecuting Ali for aiding and abetting piracy, for the government must prove *someone* committed piratical acts while on the high seas. *See Raper*, 676 F.2d at 849. That is an element the government must prove at trial, but not one it must show Ali perpetrated personally.

Of course, § 1651's high seas language could also be read as Congress's decision to narrow the scope of the international definition of piracy to encompass only those actions committed on the high seas. But Ali's preferred interpretation has some problems. Most damningly, to understand § 1651 as a circumscription of the law of nations would *itself* run afoul of *Charming Betsy*, requiring a construction in conflict with international law. Ultimately, we think it most prudent to read the statute the way it tells us to. It is titled "[p]iracy under law of nations," after all.

Like the *Charming Betsy* canon, the presumption against extraterritorial effect does not constrain trying Ali for aiding and abetting piracy. While the offense he aided and abetted must have involved acts of piracy committed on the high seas, his own criminal liability is not contingent on his having facilitated these acts while in international waters himself.

B. Conspiracy To Commit Piracy

Though the aiding and abetting statute reaches Ali's conduct, his conspiracy charge is another matter. In many respects conspiracy and aiding and abetting are alike, which would suggest the government's ability to charge Ali with one implies the ability to charge him with both. While conspiracy is a "separate and distinct" offense in the United States, *Pinkerton v. United States*, 328 U.S. 640, 643, 66 S.Ct. 1180, 90 L.Ed. 1489 (1946), it is also a theory of liability like aiding and abetting; "[a]s long as a substantive offense was done in furtherance of the conspiracy, and was reasonably foreseeable as a necessary or natural consequence of the unlawful agreement, then a conspirator will be held vicariously liable for the offense committed by his or her co-conspirators." *United States v. Moore*, 651 F.3d 30, 80 (D.C.Cir.2011) (per curiam) (internal quotation marks omitted).

Yet a crucial difference separates the two theories of liability. Because § 371, like § 2, fails to offer concrete evidence of its application abroad, we turn, pursuant to the *Charming Betsy* canon, to international law to help us resolve this ambiguity of meaning. Whereas UNCLOS, by including facilitative acts within article 101's definition of piracy, endorses aider and abettor liability for pirates, the convention is silent on conspiratorial liability. International law provides for limited instances in which nations may prosecute the crimes of foreign nationals committed abroad, and, in invoking universal jurisdiction here, the government predicates its prosecution of Ali on one of those theories. And although neither side disputes the applicability of universal jurisdiction to piracy as defined by the law of nations, UNCLOS's plain language does not include *conspiracy* to commit piracy. *See, e.g.*, Ved P. Nanda, *Maritime Piracy: How Can International Law and Policy Address This Growing Global Menace?*, 39 DENV. J. INT'L L. & POL'YY 177, 181 (2011) ("It should be noted that the [UNCLOS] definition does not refer to either an attempt to commit an act of piracy or to conspiracy relating to such an act, but it does

include voluntary participation or facilitation."). The government offers us no reason to believe otherwise, and at any rate, we are mindful that "imposing liability on the basis of a violation of 'international law' or the 'law of nations' or the 'law of war' generally must be based on norms *firmly* grounded in international law." *Hamdan v. United States*, 696 F.3d 1238, 1250 n. 10 (D.C.Cir.2012) (emphasis added). International law does not permit the government's abortive use of universal jurisdiction to charge Ali with conspiracy. Thus, the *Charming Betsy* doctrine, which was no impediment to Ali's aider and abettor liability, cautions against his prosecution for conspiracy.

The government hopes nonetheless to salvage its argument through appeal to § 371's text. Though courts construe statutes, when possible, to accord with international law, Congress has full license to enact laws that supersede it. *See Yunis*, 924 F.2d at 1091. The government suggests Congress intended to do precisely that in § 371, which provides that "[i]f two or more persons conspire ... to commit any offense against the United States ... and one or more of such persons do any act to effect the object of the conspiracy," each is subject to criminal liability. Homing in on the phrase "any offense against the United States," the government contends Congress intended the statute to apply to all federal criminal statutes, even when the result conflicts with international law. Yet, as we explained above, if we are to interpret § 371 as supplanting international law, we need stronger evidence than this. Indeed, the Supreme Court recently rejected the notion that similar language of general application successfully rebuts the presumption against extraterritorial effect. *See Kiobel*, 133 S.Ct. at 1665 ("Nor does the fact that the text reaches '*any* civil action' suggest application to torts committed abroad; it is well established that generic terms like ' any' or ' every' do not rebut the presumption against extraterritoriality.").

Under international law, prosecuting Ali for conspiracy to commit piracy would require the United States to have universal jurisdiction over his offense. And such jurisdiction would only exist if the underlying charge actually falls within UNCLOS's definition of piracy. Because conspiracy, unlike aiding and abetting, is not part of that definition, and because § 371 falls short of expressly rejecting international law, *Charming Betsy* precludes Ali's prosecution for conspiracy to commit piracy. The district court properly dismissed Count One.

III. THE HOSTAGE TAKING CHARGES

The linguistic impediments that trouble Counts One and Two do not beset the charges for hostage taking under 18 U.S.C. § 1203. The statute's extraterritorial scope is as clear as can be, prescribing punishments against "whoever, whether inside or outside the United States, seizes or detains and threatens to kill, to injure, or to continue to detain another person in order to compel a third person or a governmental organization to do or abstain from doing any act." 18 U.S.C. § 1203(a). We also need not worry about *Charming Betsy's* implications, as § 1203 unambiguously criminalizes Ali's conduct. Section 1203 likely reflects international law anyway, as it fulfills U.S. treaty obligations under the widely supported International Convention Against the Taking of Hostages, Dec. 17, 1979, 18 I.L.M. 1456, 1316 U.N.T.S. 205. *See United States v. Lin*, 101 F.3d 760, 766 (D.C.Cir.1996). Nor, as in the case of the federal piracy statute, is there any uncertainty as to the availability of conspiratorial liability, since the statute applies equally to any person who "attempts or conspires to" commit hostage taking. 18 U.S.C. § 1203(a).

Faced with this reality, Ali has adopted a different strategy when it comes to Counts Three and Four, swapping his statutory arguments for constitutional ones. He relies on the principle embraced by many courts that the Fifth Amendment's guarantee of due process may

impose limits on a criminal law's extraterritorial application even when interpretive canons do not. Though this Circuit has yet to speak definitively, *see United States v. Delgado–Garcia*, 374 F.3d 1337, 1341–43 (D.C.Cir.2004) (explaining that, even if prosecuting the appellants for their extraterritorial conduct would deprive them of due process, the argument had been waived through their unconditional guilty pleas), several other circuits have reasoned that before a federal criminal statute is given extraterritorial effect, due process requires "a sufficient nexus between the defendant and the United States, so that such application would not be arbitrary or fundamentally unfair." *United States v. Davis*, 905 F.2d 245, 248–49 (9th Cir.1990) (internal citation omitted); *see United States v. Brehm*, 691 F.3d 547, 552 (4th Cir.2012); *United States v. Ibarguen–Mosquera*, 634 F.3d 1370, 1378–79 (11th Cir.2011); *United States v. Yousef*, 327 F.3d 56, 111–12 (2d Cir.2003) (per curiam); *United States v. Cardales*, 168 F.3d 548, 552–53 (1st Cir.1999). Others have approached the due process issue in more cautious terms. *See United States v. Suerte*, 291 F.3d 366, 375 (5th Cir.2002) (assuming, without deciding, the Due Process Clause constrains extraterritorial reach in order to conclude no violation occurred); *United States v. Martinez–Hidalgo*, 993 F.2d 1052, 1056 (3d Cir.1993) (accord). Likewise, the principle is not without its scholarly critics. *See, e.g.*, Curtis A. Bradley, *Universal Jurisdiction and U.S. Law*, 2001 U. CHI. LEGAL F.. 323, 338 ("[I]t may be logically awkward for a defendant to rely on what could be characterized as an extraterritorial application of the U.S. Constitution in an effort to block the extraterritorial application of U.S. law."). We need not decide, however, whether the Constitution limits the extraterritorial exercise of federal criminal jurisdiction. Either way, Ali's prosecution under § 1203 safely satisfies the requirements erected by the Fifth Amendment.

* * * *

(2) United States v. Shibin

About one month after the D.C. Circuit opinion in *Ali*, discussed *supra*, the U.S. Court of Appeals for the Fourth Circuit issued its opinion in *United States v. Shibin*. 722 F.3d 233 (4th Cir. 2013). The Fourth Circuit agreed with the D.C. Circuit that the definition of the offense of piracy in international law includes acts not committed on the high seas, such as facilitating, or aiding and abetting, piracy. Defendant Shibin acted as a negotiator on behalf of Somali pirates in two seizures of ships on the high seas, but was never himself on the high seas when taking these actions. He was nonetheless convicted on piracy charges in the district court. His conviction was upheld on appeal. The opinion of the U.S. Court of Appeals in *Shibin* is excerpted below (with footnotes omitted).

_____

* * * *

Shibin contends first that he did not "commit the crime of piracy," as charged in Counts 1 and 7, because, "according to statutory text, legislative history, and international law, [he] could only be convicted of aiding and abetting piracy if the government proved that he was on the high seas, and while on the high seas, facilitated piratical acts."

The government observes that there is no dispute that the piracies in this case occurred on the high seas beyond the territorial waters of Somalia, which are generally defined as the waters

within 12 nautical miles of the coast. It contends that Shibin is liable as a principal in those piracies, even though he did not personally venture into international waters, because he "intentionally facilitated" and thereby aided and abetted the piracies. The government argues that liability for aiding and abetting piracy is not limited to conduct on the high seas, explaining:

> That no such limitation is imposed is sensible. Once members of a joint criminal enterprise trigger the universal jurisdiction that applies to piracy on the high seas, both international and domestic law prudently include in the scope of the crime all those persons that worked together to commit it, including those leaders like Shibin who facilitate the crime and without which the crime itself would not be possible.

In Counts 1 and 7, Shibin was charged with committing and aiding and abetting the crime of piracy, in violation of 18 U.S.C. §§ 1651 and 2. Section 1651 provides:

> Whoever, on the high seas, commits the crime of piracy as defined by the law of nations, and is afterwards brought into or found in the United States, shall be imprisoned for life.

18 U.S.C. § 1651. And § 2 provides:

> Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.

18 U.S.C. § 2(a).

The district court's jurisdiction over these crimes arises from "universal jurisdiction." Universal jurisdiction is an international law doctrine that recognizes a "narrow and unique exception" to the general requirement that nations have a jurisdictional nexus before punishing extraterritorial conduct committed by non-nationals. *United States v. Hasan*, 747 F.Supp.2d 599, 608 (E.D.Va.2010), *aff'd sub nom. United States v. Dire*, 680 F.3d 446 (4th Cir.2012). It allows any nation "jurisdiction to define and prescribe punishment for certain offenses recognized by the community of nations as a universal concern." *Restatement (Third) of Foreign Relations Law* § 404 (1987). Universal jurisdiction requires "not only substantive agreement as to certain universally condemned behavior but also procedural agreement that universal jurisdiction exists to prosecute a subset of that behavior." *Sosa v. Alvarez–Machain*, 542 U.S. 692, 762, 124 S.Ct. 2739, 159 L.Ed.2d 718 (2004) (Breyer, J., concurring in part and concurring in the judgment). The parties agree that piracy is subject to universal jurisdiction, as pirates are considered *hostis humani generis*, the enemies of all humankind. *See Harmony v. United States*, 43 U.S. (2 How.) 210, 232, 11 L.Ed. 239 (1844).

The issue presented by this appeal is whether Shibin, whose conduct took place in Somalia and in Somalia's territorial waters, may be prosecuted as an aider and abettor of the piracies of the *Marida Marguerite* and the *Quest*, which took place on the high seas. Shibin agrees that if his conduct had indeed taken place on the high seas, he could have been found guilty of aiding and abetting piracy. But in this case he participated in the piracies by conduct which took place only in Somalia and on the *Marida Marguerite* while it was located in Somali territorial waters. The issue thus reduces to a question of whether the conduct of aiding and abetting § 1651 piracy must itself take place on the high seas.

Section 1651 punishes piracy as that crime is defined by the law of nations *at the time of*

the piracy. *See Dire*, 680 F.3d at 469 (noting that "§ 1651 incorporates a definition of piracy that changes with advancements in the law of nations"). In *Dire*, we held that Article 101 of the United Nations Convention on the Law of the Sea ("UNCLOS") accurately articulates the modern international law definition of piracy. *Id.* at 459, 469.

Article 101 of UNCLOS provides:

> Piracy consists of any of the following acts:
> (a) any illegal *acts* of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and *directed:*
> (i) *on the high seas, against another ship* or aircraft, *or against persons or property on board such ship* or aircraft;
> (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
> (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
>
> (c) any *act* of inciting or *of intentionally facilitating an act described in subparagraph (a)* or (b).

UNCLOS art. 101, Dec. 10, 1982, 1833 U.N.T.S. 397, 436 (emphasis added). Thus, as relevant here, Article 101(a) defines piracy to include specified acts "directed on the high seas against another ship ... or against persons or property on board such ship," and Article 101(c) defines piracy to include any act that "intentionally facilitat[es]" any act described in Article 101(a). The parties agree that the facilitating conduct of Article 101(c) is "functionally equivalent" to aiding and abetting criminal conduct, as proscribed in 18 U.S.C. § 2.

While Shibin's conduct unquestionably amounted to acts that intentionally facilitated Article 101(a) piracies on the high seas, he claims that in order for his facilitating conduct to amount to piracy, his conduct must also have been carried out on the high seas. The text, however, hardly provides support for this argument. To the contrary, the better reading suggests that Articles 101(a) and 101(c) address distinct acts that are defined in their respective sections.

Article 101(a), which covers piracies on the high seas, explicitly requires that the specified acts be directed *at ships on the high seas.* But Article 101(c), which defines different piratical acts, independent of the acts described in Article 101(a), is linked to Article 101(a) only to the extent that the acts must *facilitate* Article 101(a) acts. Article 101(c) does not limit the facilitating acts to conduct on the high seas. Moreover, there is no conceptual reason why acts facilitating high-seas acts must themselves be carried out on the high seas. The text of Article 101 describes one class of acts involving violence, detention, and depredation of ships on the high seas and another class of acts that facilitate those acts. In this way, Article 101 reaches all the piratical conduct, wherever carried out, so long as the acts specified in Article 101(a) are carried out on the high seas.

We thus hold that conduct violating Article 101(c) does not have to be carried out on the high seas, but it must incite or intentionally facilitate acts committed against ships, persons, and property on the high seas. *See also United States v. Ali*, 718 F.3d 929, 937, 941, No. 12–3056 (D.C.Cir. June 11, 2013) (similarly interpreting Article 101(c) in the course of holding that the liability of an aider and abettor of a § 1651 piracy "is not contingent on his having facilitated

these acts while in international waters himself").

Citing UNCLOS Article 86, Shibin argues that we should read a "high-seas" requirement into the definition of the facilitating acts described in Article 101(c). Article 86 provides: "The provisions of this Part [Part VII, "High Seas," which includes Article 101] apply to all parts of the sea that are not included in the exclusive economic zone, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State." UNCLOS art. 86, 1833 U.N.T.S. at 432.

Our reading of Article 101, however, is not inconsistent with Article 86, as Article 101(a) does indeed identify piratical acts as acts against ships *on the high seas.* The subordinated acts of Article 101(c) are also acts of piracy because they facilitate Article 101(a) acts. Moreover, Article 86 serves only as a general introduction, providing context to the provisions that follow. It does not purport to limit the more specific structure and texts contained in Article 101. *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank,* ––U.S. ––––, 132 S.Ct. 2065, 2070, 182 L.Ed.2d 967 (2012) ("[I]t is a commonplace of statutory construction that the specific governs the general" (alteration in original) (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384, 112 S.Ct. 2031, 119 L.Ed.2d 157 (1992))).

Additionally, Shibin's argument is inconsistent with the interpretation of Article 101 given by various international authorities, including the United Nations Security Council. *Cf. Dire*, 680 F.3d at 469 (looking to a United Nations Security Council resolution to discern that UNCLOS represents "the definition of piracy under the law of nations"). In 2011, the Security Council adopted Resolution 1976, which reaffirmed that "international law, as reflected in ... [UNCLOS], in particular its articles 100, 101 and 105, sets out the legal framework applicable to combating piracy and armed robbery at sea." S.C. Res. 1976, preambular ¶ 8, U.N. Doc. S/RES/1976 (Apr. 11, 2011). Importantly, the Resolution stressed "the need to investigate and prosecute those who illicitly *finance, plan, organize, or unlawfully profit* from pirate attacks off the coast of Somalia, recognizing that individuals and entities who incite or *intentionally facilitate* an act of piracy are themselves engaging in piracy as defined under international law." *Id.* ¶ 15 (emphasis added). Clearly, those who "finance, plan, organize, or unlawfully profit" from piracy do not do so on the high seas.

Similarly, Security Counsel Resolution 2020, adopted in 2011, recognizes "the need to investigate and prosecute not only suspects captured at sea, *but also anyone who incites or intentionally facilitates piracy operations,* including key figures of criminal networks involved in piracy *who illicitly plan, organize, facilitate, or finance and profit* from such attacks." S.C. Res. 2020, preambular ¶ 5, U.N. Doc. S/RES/2020 (Nov. 22, 2011) (emphasis added).

These sources reflect, without ambiguity, the international viewpoint that piracy committed on the high seas is an act against all nations and all humankind and that persons committing those acts on the high seas, *as well as those supporting those acts from anywhere,* may be prosecuted by any nation under international law. *See Ali,* 718 F.3d at 941, No. 12–3056.

Shibin makes a similar argument that he made with respect to UNCLOS to the domestic law provisions of 18 U.S.C. §§ 1651 and 2. Thus, he argues that the "on the high seas" requirement contained in § 1651 means that even those who are charged under § 2 for aiding and abetting a § 1651 piracy must act on the high seas. As he did with Article 101, Shibin seeks to import the high seas locational component of § 1651 into § 2. We believe that this argument fairs no better.

To violate § 1651, a principal must carry out an act of piracy, as defined by the law of nations, *on the high seas.* But Shibin was not prosecuted as a principal; he was prosecuted as an

aider and abettor under § 2. Section 2 does not include any locational limitation, just as Article 101(c) of UNCLOS does not contain a locational limitation. Section 2 more broadly punishes conduct that "aids, abets, counsels, commands, induces or procures" commission of "an offense against the United States," including conduct punished in § 1651. 18 U.S.C. § 2(a). And nothing in § 1651 suggests that an aider and abettor must satisfy its locational requirement.

It is common in aiding-and-abetting cases for the facilitator to be geographically away from the scene of the crime. For example, to be convicted of aiding and abetting a bank robbery, one need not be inside the bank. *See United States v. Ellis*, 121 F.3d 908, 924 (4th Cir.1997) ("[O]ne's physical location at the time of the robbery does not preclude the propriety of an aiding and abetting charge"); *United States v. McCaskill*, 676 F.2d 995, 1000 (4th Cir.1982) (concluding that driver of the getaway car was liable as an aider-and-abettor); *Tarkington v. United States*, 194 F.2d 63, 68 (4th Cir.1952) ("It is also obvious that there is no merit in the contention that the conviction was invalidated because [the defendant] was not physically present at the bank when the robbery took place"). Similarly, "[o]ne need not be present physically at the time to be guilty as an aider and abettor in an embezzlement." *United States v. Ray*, 688 F.2d 250, 252 (4th Cir.1982).

Nonetheless, *Shibin* relies on *United States v. Ali*, 885 F.Supp.2d 17 (D.D.C.2012), *rev'd* in relevant part, 718 F.3d at 947, No. 12–3056, to contend that we should read a locational limitation into § 2 based on the Supreme Court's interpretation of the predecessor statute. In *United States v. Palmer*, 16 U.S. (3 Wheat.) 610, 633–34, 4 L.Ed. 471 (1818), the Supreme Court concluded that the piracy provisions of the Crimes Act of 1790 did not reach conduct committed by foreign vessels traversing the high seas. To reverse that ruling, Congress revised the offense of general piracy. But in doing so, it did not alter § 10 of the Crimes Act of 1790, which is § 2's predecessor. From this history, Shibin argues that § 2 is therefore a municipal statute, applying only to piracy within United States territory. But the tie between *Palmer* and § 2 is not strong enough to validate Shibin's argument. First, the Supreme Court's comments in *Palmer* on § 2's predecessor are dicta. *See Palmer*, 16 U.S. at 629–30. But more importantly, § 2's predecessor was tied to the crimes proscribed by the Crimes Act of 1790 and was narrower than today's § 2. Thus, *Palmer* did not construe the modern aiding-and-abetting liability. We are satisfied to give § 2, in its present form, its natural reading.

Accordingly, we affirm Shibin's piracy convictions in Counts 1 and 7, based on his intentionally facilitating two piracies on the high seas, even though his facilitating conduct took place in Somalia and its territorial waters.

* * * *

C. INTERNATIONAL, HYBRID, AND OTHER TRIBUNALS

1. Expansion of the War Crimes Rewards Program

On January 15, 2013, President Obama signed into law the Department of State Rewards Program Update and Technical Corrections Act of 2012, S. 2318. Under the updated War Crimes Rewards Program, the Department of State may offer and pay cash rewards for information leading to the arrest, transfer, or conviction of foreign nationals

accused of crimes against humanity, genocide, or war crimes by any international, mixed, or hybrid criminal tribunal. The original program offered rewards for information only about those indicted by the International Criminal Tribunals for the former Yugoslavia and Rwanda and the Special Court for Sierra Leone. On April 3, 2013, Stephen J. Rapp, Ambassador-at-Large for War Crimes Issues, participated in a special briefing about the expanded War Crimes Reward Program, announcing specific individuals for whom rewards were being offered under the program. Ambassador Rapp's remarks are excerpted below and are available in full at *www.state.gov/j/gcj/us_releases/remarks/2013/207031.htm*. Secretary Kerry also announced the reward offers and described the expanded War Crimes Reward Program on April 3 in a contribution to the Huffington Post, which is available at *www.state.gov/r/pa/prs/ps/2013/04/207033.htm*.

* * * *

We're here today to announce the designation of additional fugitives …for which a reward can be paid under recent legislation to expand the State Department's longstanding War Crimes Rewards Program. We're announcing today that the Secretary of State will offer up to $5 million for information leading to the arrests, the transfer, or conviction of three top leaders of the LRA, the Lord's Resistance Army: Joseph Kony, Okot Odhiambo, and Dominic Ongwen, as well as the leader of the Democratic Forces for the Liberation of Rwanda, known as the FDLR, Sylvestre Mudacumura. The nine fugitives that had earlier been designated for the ICTR, the Rwanda tribunal, will remain on the list.

Accountability is a key pillar of the United States Atrocity Prevention Initiative and our national security strategy, which states that the end of impunity and the promotion of justice are not just moral imperatives; they're stabilizing forces in international affairs. We act today so that there can be justice for the innocent men, women, and children who have been subjected to mass murder, to rape, to amputation, enslavement, and other atrocities.

I'd like to tell you just a little about this program and its expansion. It's managed by my office, the Office of Global Criminal Justice, here at the State Department. It originally offered rewards for information leading to the arrest or conviction of individuals indicted by the three international tribunals that were created for the former Yugoslavia, for Rwanda and Sierra Leone. Since 1998, our ability to pay these rewards has proven to be a valuable tool for the United States Government to promote accountability for the worst crimes known to humankind, by generating valuable tips that enable authorities to track down the world's most notorious fugitives from justice.

In the past two years alone, we've made 14 payments at an average of about 400,000 per person, with the largest payment being $2 million. The actual amount depends on a range of factors, including the risk, the informant, the value of the information, and the level of the alleged perpetrator. To date, with the assistance of the War Crimes Reward Programs, no indictee remains at the International Criminal Tribunal for the former Yugoslavia. 161 persons were charged; all of them have been brought to justice. In addition, out of the 92 individuals indicted by the Rwanda tribunal, only nine have yet to be apprehended. And these nine

individuals are still subject to rewards of up to $5 million for information leading to their capture.

This program has sent a strong message to those committing atrocities that the deeds that they have done, for those deeds, they will have to answer in court. Nevertheless, while the program has achieved great success with these three tribunals, it risks becoming obsolete as they gain custody of their last remaining fugitives. To that end, we began to advocate for an expansion of the program to bolster our ongoing efforts to bring other alleged war criminals to justice. In early 2012, Congressman Edward Royce, who then headed a subcommittee and now chairs the full House Foreign Affairs Committee, and Secretary Kerry, who chaired Foreign Relations Committee in the Senate and now, of course, heads our Department, introduced bipartisan legislation to expand and modernize this program. The bill passed both houses unanimously with final legislative approval on January 1st, 2013. On January 15th, 2013, President Obama signed the legislation into U.S. law.

Under this expanded program, the Secretary of State, after interagency consultation and on notice to Congress, may designate individuals for whom rewards may be offered for information leading to their arrest, transfer, or conviction. The designated individuals must be foreign nationals accused by any international tribunal, including mixed or hybrid courts, for crimes against humanity, genocide, or war crimes. This includes the International Criminal Court, but also new mixed courts that may be established in places such as the Democratic Republic of Congo or for Syria.

To that end, the expanded program now targets the alleged perpetrators of the worst atrocities, some of whom have evaded justice for more than a decade. The LRA is one of the world's most brutal armed groups and has survived for over 20 years by abducting women and children and forcing them to serve as porters, sex slaves, and fighters. The International Criminal Court has issued arrest warrants for Joseph Kony and other top LRA leaders on charges of war crimes and crimes against humanity. For too long, the DRC has been plagued by conflict, displacement and insecurity. Innocent civilians have suffered continued atrocities at the hands of armed groups such as the FDLR and M23 that support themselves by pillage of the population and exploitation of precious minerals.

* * * *

2. International Criminal Court

a. Overview

Stephen J. Rapp, U.S. Ambassador-at-Large for War Crimes Issues, delivered a statement on behalf of the U.S. observer delegation at the general debate of the Twelfth Session of the annual Assembly of States Parties ("ASP") to the International Criminal Court ("ICC") at The Hague on November 21, 2013. Ambassador Rapp's remarks at the general debate are excerpted below and available at *www.state.gov/j/gcj/us_releases/remarks/2013/218069.htm*.

* * * *

Today, I would like to speak about the U.S. Government's work on the common cause of bringing justice to the victims of the world's worst crimes. The United States has continued to enhance its efforts on this front, including through robust engagement with the ICC and support for each of the situations in which investigations or prosecutions are underway. In the past year, we have worked with many of you across continents and in different venues to achieve shared goals.

… [T]he key to winning greater international and U.S. support going forward will be for the ICC to focus on strengthening itself as a fair and legitimate criminal justice institution that acts with prudence in deciding which cases to pursue. Critical to the future success of the ICC, and the views of the United States and others in the international community regarding the ICC, will be its attention to: (1) building institutional legitimacy; (2) promoting a jurisprudence of legality, with detailed reasoning and steeped in precedent; (3) fostering a spirit of international cooperation; and (4) developing an institutional reputation for professionalism and fairness. In this regard, we take note of the ICC Office of the Prosecutor's new strategic plan and particularly those strategic goals aimed at improving the cost-effectiveness, productivity, quality, and efficiency of the Office. In the past year we have attempted, though our outreach, diplomacy, and support, to contribute to this work in a manner that furthers our own abiding interest in justice and the rule of law. Let me provide a few examples to be more concrete.

We have continually emphasized that it is essential—for justice and for peace—that the fugitives at large in the ICC's current cases be apprehended. I am pleased to recount some significant advances that we have made on this front in the past year. This year U.S. military advisors supported militaries from the AU Regional Task Force, who moved closer to apprehending top Lord's Resistance Army (LRA) commanders and ending the LRA threat once and for all. And in January 2013, President Obama signed legislation expanding the War Crimes Rewards Program, enabling the United States to offer rewards of up to $5 million for information leading to the arrest of ICC fugitives. Under this expanded program, Secretary of State Kerry, who sponsored the legislation as a U.S. Senator, announced reward offers for persons subject to ICC arrest warrants in the Uganda and DRC cases, including Joseph Kony and two other top leaders of the LRA, as well as the leader of the Democratic Forces for the Liberation of Rwanda, Sylvestre Mudacumura. The United States remains steadfast in its commitment to bringing to justice those responsible for terrible atrocities, and as the Rewards expansion demonstrates, we are putting our money where our proverbial mouth is.

The United States also played a key role in the surrender of Bosco Ntaganda to the ICC in March of this year. Ntaganda was a fugitive from justice for nearly seven years. He stands accused of war crimes and crimes against humanity in the DRC involving rape, murder, sexual slavery, and the forced recruitment and use as soldiers of thousands of Congolese children. He returned repeatedly to the battlefield in the eastern DRC, including most recently as the leader of an M23 rebel group faction. But ultimately, it seems, the prospect of trial in The Hague proved more appealing than war in the bush. When Ntaganda—who had also been designated under our War Crimes Rewards Program—voluntarily turned himself in at the U.S. Embassy in Kigali in March, we worked hard to facilitate his surrender to the ICC in cooperation with the Rwandan, Dutch, and British governments. At the time, we noted that removing Ntaganda from the battlefield and bringing him to justice was an important step toward ending the cycle of impunity that has fostered violence and instability in the DRC for far too long. And just this month, we saw the end of the M23 rebellion and of its threat to the civilian population of the Eastern DRC. Negotiations between the DRC government and M23 have yielded a political resolution that

rejects amnesty for the perpetrators of atrocity crimes. We are hopeful that the final political resolution will be signed immediately. Now we must remain vigilant in ensuring that justice for the victims is prioritized, through the ICC's prosecution of Ntaganda, reparation efforts for the victims, and the DRC's proposed establishment of specialized mixed chambers and the reinforcement of other domestic justice institutions to judge the serious offenders who are not charged at the ICC.

This year we have also been confronted with the ongoing importance of witness protection. Any court's ability to protect a witness's identity and safety is a key determinant in its ability to provide justice. From assistance from States, to protective measures, to charges for offenses against the administration of justice, the Court can and has employed a range of tools. All concerned must continue to explore all available tools, and to send a clear message that witness interference or intimidation will not be tolerated. As I have stated here before, these are particularly vexing challenges, and the United States is committed to supporting the quest for solutions, including by working with the Court to respond positively to requests for assistance relating to witness protection.

In addition to witnesses, it is crucial to support the victims of atrocities in ICC situation countries, including through their participation and reparation. I am pleased to see the range of sessions and side events at this year's ASP that are focused on victims' issues. Victims, of course, play an active role in ICC proceedings and related matters. The Rome Statute also includes novel provisions on reparation for victims, and establishes a Trust Fund for Victims. One area in which support to victims is particularly critical is in crimes of sexual violence in conflict. We know that impunity for perpetrators of these crimes affects not just the immediate survivors, but entire communities, and that it undermines the prospects for lasting peace in conflict-affected societies. But sexual violence is not an inevitable consequence of conflict; we can address it, we can deter it, and we can prevent it. To that end, I would like to commend, in particular, the efforts of the UK in spearheading the Preventing Sexual Violence Initiative in which we, along with our G8 partners, seek to focus international attention on preventing the scourge of sexual violence through justice and accountability. Survivors of sexual violence, and in particular child victims, must have access to health, psychosocial, legal, and economic support. Among other things, signatories of the G8 Declaration on Preventing Sexual Violence committed to work to provide adequate services to victims, including through programs such as the Trust Fund for Victims and its implementing partners. This year, the United States pledged $10 million in support of the UK's initiative.

…[I]in any discussion of accountability as a means to prevent and deter mass atrocities, we must always return to the principle of complementarity. The ICC is a court of limited jurisdiction. Even in countries in which the ICC has opened investigations, it cannot and should not take up every case that cries out for justice. States must build the capacity of their own courts to handle atrocity cases and impart justice closer to the victims and affected communities. It is both their right, and their responsibility. Around the globe in ICC situation countries and elsewhere, in domestic and hybrid courts, from DRC's proposed specialized mixed chambers to Guatemala's "high risk" courts to the hybrid Extraordinary African Chambers established by the African Union and Senegal to prosecute Hissène Habré, the United States is following the lead of local efforts by devoting our support and resources to strengthening local partners.

Although the Court has now entered its second decade, relatively speaking it is still a young institution. There are myriad challenges and unforeseen situations that it will face as it grows, and the way that the Court and the States Parties address such challenges will affect the

Court's long-term success and its ability to contribute to justice, without which lasting peace is not possible. In this regard, I would like to acknowledge the important work being undertaken at this session of the ASP to engage on issues that have been raised by the African Union and Kenya in recent months. The United States takes these matters seriously and believes that they are best addressed within the framework of the Court and here at the ASP. Among other things, we encourage all States to engage in a constructive manner on these issues, and to consider seriously the proposals related to "presence" of defendants under the Rome Statute. This work, as well as the various sessions and side events devoted to grappling with concerns raised by States over the past year, are all important contributions to the conversation.

Another challenge with which the international community needs to grapple involves the crime of aggression. The United States continues to have many concerns about the amendments adopted in Kampala, including the risk of these amendments working at cross-purposes with efforts to prevent or punish genocide, crimes against humanity, and war crimes—which provide the very ***raison d'être*** for the Court. The States Parties were wise to create breathing space by subjecting the Court's jurisdiction to a decision to be taken after January 1, 2017. The international community should use that breathing space to ensure that efforts to ensure accountability for genocide, crimes against humanity, and war crimes can be consolidated and that measures regarding the amendments requiring attention can be properly considered; and it is our view that States should not move forward with ratifications pending the resolution of such issues.

The ASP, with its 122 member States hailing from every continent on the globe, is well situated to take up new challenges and forge common solutions. We will continue to follow these discussions with great interest, and to remain steadfast in our efforts to achieve justice for the victims of genocide, war crimes, and crimes against humanity.

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On October 31, 2013, Stephen Zack, U.S. Senior Advisor, delivered remarks at a UN General Assembly meeting on the Report of the International Criminal Court. The remarks, excerpted below, are available in full at *http://usun.state.gov/briefing/statements/216243.htm*.

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Strengthening accountability for those responsible for the worst atrocities remains an important priority for the United States. President Obama has repeatedly emphasized the importance of preventing mass atrocities and genocide as a core national security interest and a core moral responsibility of the United States. The United States is committed to working with the international community to bring concerted international pressure to bear to prevent atrocities and ensure accountability for the perpetrators of these crimes. Although the United States is not a party to the Rome Statute, we recognize that the ICC can play an important role in a multilateral system that aims to ensure accountability and end impunity.

The ICC, by its nature, is designed only to pursue those accused of bearing the greatest responsibility for the most serious crimes within its jurisdiction when states are not willing or

able to investigate or prosecute genuinely. We therefore continue to support positive complementarity initiatives by assisting countries in their efforts to develop domestic accountability processes for atrocity crimes. Accountability and peace begin with governments taking care of their own people. The international community must continue to support rule of law capacity-building initiatives to advance transitional justice, including the creation of hybrid structures where appropriate, and must develop a shared approach to recurring issues such as coordinated and effective protection for witnesses and judicial personnel. From the Democratic Republic of the Congo to Senegal's efforts with the AU to prosecute Hissène Habré, the United States continues to support efforts to build fair, impartial, and capable national justice systems as well as hybrid tribunals where appropriate.

At the same time, we must strengthen accountability mechanisms at the international level. We will continue to work with the ICC to identify practical ways in which we can work to advance our mutual goals–on a case-by-case basis and consistent with U.S. policy and laws. In the past year, for example, we worked with the Court and other states to help assist in the voluntary surrender to the ICC in March of Bosco Ntaganda, allegedly responsible for atrocities committed in the Democratic Republic of Congo. This was an important moment for all who believe in justice and accountability. And in January, President Obama signed into law an expansion of the United States War Crimes Rewards program to permit the offer of rewards for information leading to the arrest, transfer, or conviction of individuals accused of criminal responsibility for genocide, war crimes or crimes against humanity by any hybrid or international criminal tribunal, including the ICC. Shortly thereafter, we added a number of individuals subject to ICC arrest warrants to our rewards list—including Joseph Kony in the Uganda situation and Sylvestre Mudacumura, still at large in the DRC situation. We look forward to continuing to engage with States Parties and other States on these and other shared issues of concern, such as information sharing and witness protection.

… [I]t is critical that the international community remain committed to working toward coordinated efforts both to prevent atrocities before they occur and to provide accountability for those responsible for atrocities that do happen. Although the international community has made progress on both fronts, much work remains. The United States remains committed to working in partnership with others to achieve these goals. We look forward to continued discussions here at the United Nations and to our upcoming participation as an Observer at the ICC's Assembly of States Parties in The Hague next month.

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b. Libya

On November 14, 2013, Ambassador Rosemary A. DiCarlo, Deputy U.S. Permanent Representative to the UN, delivered remarks at a UN Security Council briefing by ICC Prosecutor Fatou Bensouda on the situation in Libya. In 2011, the UN Security Council adopted Resolution 1970, which referred the situation in Libya in 2011 to the ICC. See Digest 2011 at 91-93. Ambassador DiCarlo's remarks, excerpted below, are available in full at *http://usun.state.gov/briefing/statements/217585.htm*. Ambassador DiCarlo also addressed a UN Security Council briefing on the Libya referral to the ICC on May 8, 2013. Her remarks to the Security Council from May 8, 2013 are available at

http://iipdigital.usembassy.gov/st/english/texttrans/2013/05/20130508147025.html#axzz2ycB2Ny9l.

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The United States welcomes the commitment and efforts of the government and people of Libya during their country's transition following forty years of dictatorship. We recognize that the process of building a democratic and secure nation is a long-term endeavor with many challenges. An important part of this process is in the field of the rule of law, where Libya will need to continue to build on ongoing efforts to bolster accountability mechanisms that help support and develop a more robust, fair, and effective system of justice.

In this regard, we welcome Libya's continued commitment to fulfilling its international obligations, including those related to the ICC under Resolution 1970. We also welcome Libya's continuing cooperation in the ongoing proceedings before the ICC. We note with interest the recent memorandum of understanding on burden sharing between Libyan authorities and the ICC regarding investigations and prosecutions.

Under the Rome Statute, the International Criminal Court is complementary to national jurisdiction. The Pre-Trial Chamber's October 11 decision granting Libya's admissibility challenge in the case against Abdullah al-Senussi—the first such decision by the ICC—is a significant development in this regard. We note that the Court found that Libyan authorities are taking concrete and progressive steps in the domestic proceedings against Mr. al-Senussi and that Libya had demonstrated that it is willing and able to genuinely investigate and prosecute the case.

Mr. President, in these proceedings, we are seeing the principle of complementarity applied in the context of a country transitioning out of conflict. The Prosecutor's report notes a number of efforts that Libya has undertaken to develop its justice institutions and mechanisms. These include Libya's new Transitional Justice Law, the Fact Finding and Reconciliation Commission, and a new draft law on rape as a war crime. We welcome these and other initiatives, including those that help build much-needed capacity in the justice system so that justice can be delivered more effectively. Finally, we would like to emphasize the Libyan government must work to ensure that those in detention centers are not held without due process and that they are treated humanely, including in accordance with Libya's April 2013 law criminalizing torture.

In the end, much of the responsibility for ensuring accountability for crimes in Libya will fall to domestic authorities. Even where the ICC has jurisdiction, it cannot pursue every case, nor is it charged with general monitoring or oversight of Libya's overall progress in implementing justice and rule of law initiatives.

In light of this mandate, we appreciate the Prosecutor's statement on how she intends to focus her Office's work as the Court carries out its responsibility to investigate and prosecute those who bear the greatest responsibility for crimes.

The United States stands ready to assist Libya as it works to reform its justice sector, strengthen the rule of law, and advance human rights. We strongly believe that these and other areas of Libya's transition need to be fully addressed. We look forward to working with the international community, including UNSMIL and other international partners, in a targeted and coordinated way to ensure adequate support to Libya as it undertakes these critical efforts.

The United States also looks forward to continuing our active engagement with the Office of the Prosecutor and the ICC, consistent with our law and policy, to advance accountability for atrocities.

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c. Kenya

On November 15, 2013, U.S. Permanent Representative to the UN Samantha Power delivered an explanation of vote on the U.S. decision to abstain from a Security Council vote on a request for deferral by Kenya of ICC proceedings against Uhuru Kenyatta and William Ruto (the sitting President and Deputy President of Kenya). In 2010, the ICC opened its investigation relating to alleged crimes against humanity committed during post-election violence in Kenya in 2007 and 2008. See *Digest 2010* at 139. Ambassador Power's remarks, below, are available at http://usun.state.gov/briefing/statements/217614.htm.

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Thank you. The United States abstained on this vote because we believe that the concerns raised by Kenya regarding the International Criminal Court proceedings against President Kenyatta and Deputy President Ruto are best addressed within the framework of the Court and its Assembly of States Parties, and not through a deferral mandated by the Security Council. This position is consistent with the view that we shared with the African Union Contact Group at the Council's Informal Interactive Dialogue at the end of October.

Further, the families of the victims of the 2008 post-election violence in Kenya have already waited more than five years for a judicial weighing of the evidence to commence. We believe that justice for the victims of that violence is critical to the country's long-term peace and security. It is incumbent on us all to support accountability for those responsible for crimes against humanity.

At the same time, we want to emphasize our deep respect for the people of Kenya. We share their horror and outrage at the recent Westgate Mall terror attacks and understand their desire both for effective governance and for accountability under the law. We are mindful, as well, of the importance of these issues to the member states of the African Union that have raised similar concerns. We recognize that the situation the Court is confronting in these cases is a new one—the ICC has never before had a trial of a defendant who is also a sitting head-of-state, or a person who may act in such a capacity, and who has appeared voluntarily subject to a summons. Accordingly, we are encouraged that Kenya is continuing to pursue its concerns through an ongoing ICC process.

We are also encouraged that the Assembly of States Parties, which includes the government of Kenya, is working to enable trial proceedings to be conducted in a manner that will not force the defendants to choose between mounting a vigorous legal defense on the one hand and continuing to do their jobs on the other. The Assembly, which under the Rome Statute

has responsibility for overseeing the Court's administration, will meet next week, and will have the chance to engage in dialogue and consider amendments that could help address outstanding issues.

Because of our respect for Kenya and the AU, and because we believe that the Court and its Assembly of States Parties are the right venue for considering the issues that Kenya and some AU members have raised, we have decided to abstain rather than vote "no" on this resolution.

The United States and Kenya have been friends and strong partners for half a century. We value the friendship and will continue working with the government and people of Kenya on issues of shared concern, including security against terror, economic development, environmental protection, the promotion of human rights, and justice. We also continue to recognize the important role that the ICC can play in achieving accountability, and are steadfast in our belief that justice for the innocent victims of the post-election violence in Kenya is essential to lasting peace.

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On November 27, 2013, the ICC's ASP reached consensus on amendments to the ICC's Rules of Procedure and Evidence, including amendments relating to the presence of defendants at trial proceedings. The amendments are available at *www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ASP12/ICC-ASP-12-Res7-ENG.pdf*. Ambassador Power issued a statement on the amendments, available at *http://usun.state.gov/briefing/statements/218108.htm*, and excerpted below.

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I applaud the International Criminal Court's (ICC) Assembly of States Parties' achievement in reaching consensus today on a package of amendments to the ICC's Rules of Procedure and Evidence. The United States believes in the importance of accountability for those responsible for crimes against humanity, and we have taken seriously Kenyan concerns about the ongoing trial proceedings.

Earlier this month, when the issue came before the United Nations Security Council, I encouraged Kenya and the African Union to work within the framework of the Assembly of States Parties to enable the proceedings to be conducted in a manner that would not make the Kenyan defendants choose between mounting a vigorous legal defense and continuing to do their jobs. Today, because of the remarkable efforts of the Assembly of States Parties members, including the Kenyan delegation, supported by many African Union member states including South Africa and Botswana, the Assembly of States Parties has done just that.

The situation the ICC is confronting in the Kenya cases is a new one. The ICC has never before tried a defendant who is also a sitting head-of-state and who has appeared voluntarily in Court. I offer my congratulations to the Assembly of States Parties, and particularly the States Parties who engaged constructively to help refine the Court's own processes and resolved this matter in a manner that appropriately protects the rights and interests of both victims and defendants while allowing the judicial process to proceed without delay.

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d. Surrender of Bosco Ntaganda

In a March 22, 2013 press statement by Secretary of State John Kerry, the United States welcomed the surrender of Bosco Ntaganda to the International Criminal Court in The Hague. Bosco Ntaganda was subject to two ICC arrest warrants for war crimes and crimes against humanity allegedly committed in the Democratic Republic of the Congo. The statement, available at *www.state.gov/secretary/remarks/2013/03/206556.htm*, follows. NSC Spokesperson Caitlin Hayden also issued a statement (not excerpted herein), available at *www.whitehouse.gov/the-press-office/2013/03/22/statement-nsc-spokesperson-caitlin-hayden-bosco-ntaganda-s-surrender-int*.

> The United States welcomes the removal of one of the most notorious and brutal rebels in the Democratic Republic of the Congo, Bosco Ntaganda, from Rwanda to the International Criminal Court in The Hague. This is an important moment for all who believe in justice and accountability. For nearly seven years, Ntaganda was a fugitive from justice, evading accountability for alleged violations of international humanitarian law and mass atrocities against innocent civilians, including rape, murder, and the forced recruitment of thousands of Congolese children as soldiers. Now there is hope that justice will be done.
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> Ultimately, peace and stability in the D.R.C. and the Great Lakes will require the restoration of civil order, justice, and accountability. Ntaganda's expected appearance before the International Criminal Court in The Hague will contribute to that goal, and will also send a strong message to all perpetrators of atrocities that they will be held accountable for their crimes.
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> The United States is particularly grateful to the Rwandan, Dutch, and British Governments for their cooperation in facilitating the departure of Bosco Ntaganda from Rwanda and his expected surrender to The Hague.

e. Darfur

On June 5, 2013, Ambassador Jeffrey A. DeLaurentis, U.S. Alternate Representative to the UN for Special Political Affairs, addressed a UN Security Council briefing by the ICC Prosecutor on the situation in Darfur. Ambassador DeLaurentis's remarks are excerpted below and available at *http://usun.state.gov/briefing/statements/210326.htm*.

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The United States welcomes the continued role of the International Criminal Court in the fight against impunity for atrocities committed in Darfur. We note the progress of the proceedings in the Abdallah Banda Abaker Nourain and Saleh Jerbo case and hope this trial will be the first of several concerning the situation in Darfur.

At the same time, it remains clear that the Government of Sudan is still not cooperating with the ICC to execute the outstanding arrest warrants in the Darfur cases, despite its obligations under Security Council Resolution 1593. The subjects of these warrants remain at large in Sudan and continue to cross international borders. The United States stands with the many states that refuse to admit those individuals to their countries and commends those who have spoken out against President Bashir's continued travel. We oppose invitations, facilitation, or support for travel by those subject to ICC arrest warrants in Darfur and we urge other states to do the same.

As the Prosecutor notes, there have been continued instances of non-cooperation. On March 26, the Court issued a decision that the Republic of Chad failed to comply with its obligations when it welcomed Bashir for a visit—his fourth visit to Chad since the ICC issued an arrest warrant on March 4, 2009. Then, on April 25-26, Chad hosted Defense Minister Abdel Raheem Hussein, and on May 11, Chad again hosted President Bashir without any attempt to arrest him. The United States would welcome discussion of follow-up on the ICC's decision, which was referred to this Council.

The Prosecutor's report comes amid ongoing developments related to Darfur that are of great concern to the United States. The UN Independent Expert on the situation of human rights in Sudan notes that the Government of Sudan has not upheld its commitments in the Doha Document for Peace in Darfur to establish credible local justice and accountability mechanisms; nor has it made the Special Court for Darfur operational or requested international observers from the AU and UN for the court. Despite the conviction in February of six Popular Defense Force soldiers accused of killing a community leader in Abu Zereiga, the Secretary-General's latest report on the AU-UN Hybrid Operation in Darfur (UNAMID) expressed serious concern about the lack of accountability for violations of human rights and international humanitarian law in Darfur.

Furthermore, the United States is deeply concerned about the increasing violence in Darfur, including reports of aerial bombardments targeting or indiscriminately affecting civilians, sexual and gender based violence and other crimes, and continuing attacks on UNAMID peacekeepers. As a result, the United Nations estimates that 300,000 people have fled fighting in all of Darfur in the first five months of this year, which is more than the total number of people displaced in the last two years together. On April 19, one peacekeeper was killed and two injured in an attack on the UNAMID Team Site in Muhajariya by individuals wearing Sudanese army uniforms. We condemn in the strongest terms these continuing attacks on UNAMID peacekeepers and Sudan's failure to prosecute those responsible.

The international community must reverse the escalating violence and deteriorating human rights and humanitarian situation in Darfur. Ensuring accountability for serious violations of international law must be part of this effort. Continued impunity for crimes in Darfur has sent a message to Khartoum that there are no consequences for violence against non-combatants, a lesson it has applied tragically not only in Darfur but in the Two Areas as well. The Banda and Jerbo case is an important test, but the Government of Sudan has much more to do, and this Council must insist that Sudan fulfill its obligations.

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On December 11, 2013, Ambassador DeLaurentis again addressed a UN Security Council briefing by the ICC Prosecutor on the situation in Darfur. Ambassador

DeLaurentis's remarks are excerpted below and available at *http://usun.state.gov/briefing/statements/218964.htm*.

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…We are pleased to welcome Ms. Fatou Bensouda, Prosecutor of the International Criminal Court, to the Council. We would like to thank her for today's briefing, as she noted, the eighteenth report by an ICC Prosecutor on the situation in Darfur since Resolution 1593 was adopted in 2005.

Madam Prosecutor, the United States reiterates its appreciation to you and your office for your work to advance the cause of justice for the people of Darfur. Your perseverance with these long-standing cases is highly commendable, particularly given the obstacles the ICC faces as a result of the Government of Sudan's continued non-cooperation.

Mr. President, justice will be the cornerstone of a stable and sustainable peace agreement in Darfur. The United States remains deeply concerned that the lack of progress on accountability for atrocities committed in Darfur continues to contribute to instability throughout Sudan. Lasting impunity goes hand in hand with continued violence and insecurity.

The Prosecutor's report is replete with stark reminders of the challenges her office faces in seeking to address the atrocities suffered by the victims in Darfur. It once again details the blatant disregard of the Government of Sudan for its obligation to cooperate with the ICC pursuant to Resolution 1593.

The most concerning element of the Prosecutor's briefing today is that the individuals subject to the ICC's arrest warrants in Darfur continue to remain at large. The Government of Sudan has the responsibility to implement these warrants, yet it has consistently failed to do so while also offering no meaningful measure of justice at the national level. The Government of Sudan must fully cooperate with the ICC and its Prosecutor, and we continue to call for it to do so.

In a direct affront to the charges leveled against them, the individuals subject to outstanding arrest warrants also continue to cross international borders. The international community should remain united against these acts of defiance against justice by preventing such travel. States and regional bodies should ensure that these individuals are not invited to their countries and should not facilitate or support travel by those subject to the arrest warrants.

We welcome the Prosectuor's continued pursuit of justice through her continued work on the case against Abdallah Banda, and we look forward to the start of that trial and the defendant's continued cooperation. Yet there are other very troubling elements of the Prosecutor's report.

Of particular concern are allegations of sexual and gender based violence in Darfur. Such crimes shock the conscience, and the lack of accountability fuels the cycle of violence, resentment, reprisal attacks, and further conflict.

We also continue to be deeply concerned by attacks on UN peacekeepers. While the Government of Sudan claims to be investigating these deplorable incidents, there have been no results and no evidence that these killings have been seriously addressed. Local accountability initiatives, particularly the Special Criminal Court on the Events in Darfur, also remain wanting.

We urge observers from the African Union and the United Nations to monitor the Court's proceedings—or lack thereof—and report publicly their observations.

In conclusion, Mr. President, accountability for genocide, war crimes, and crimes against humanity in Darfur is both a moral imperative and an issue of peace and security. The United States places a high priority on promoting justice and lasting peace for all of the people of Sudan. We once again commend Prosecutor Bensouda for her work to investigate and prosecute those most responsible for atrocities committed in Darfur.

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3. International Criminal Tribunals for the Former Yugoslavia and Rwanda

On April 10, 2013, Erin Pelton, Spokesperson for the U.S. Mission to the UN, issued a statement regarding a UN General Assembly Thematic Debate on the Role of International Criminal Justice in Reconciliation. The United States and several other states boycotted the debate. Ms. Pelton's statement, below, is available at *http://usun.state.gov/briefing/statements/207244.htm*.

> The United States strongly disagrees with the decision of the President of the General Assembly to hold an unbalanced, inflammatory thematic debate today on the role of international criminal justice in reconciliation and will not participate. We believe that ad hoc international criminal tribunals and other judicial institutions in Rwanda, the former Yugoslavia, Sierra Leone, and Cambodia have been critical to ending impunity and helping these countries chart a new, more positive future. We regret in particular that the way today's thematic debate and the related panel discussion are structured fail to provide the victims of these atrocities an appropriate voice.
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> Today's session is a missed opportunity to strengthen the global system of accountability for those most responsible for atrocities, an important priority of the United States. Holding accountable those responsible for such acts through impartial and independent trials reinforces the rule of law, deters future criminal activity, and reinforces human rights law and international humanitarian law norms. Accountability is also an important component of a holistic transitional justice agenda, which supports long-term peace and reconciliation in countries emerging from armed conflict with legacies of large scale abuse. While we have made progress in these areas, much work remains. The United States will not rest until those responsible for perpetrating mass atrocities face justice and those who would commit such crimes know they will never enjoy impunity.

On June 12, 2013, Ambassador DeLaurentis delivered remarks at a Security Council briefing on the International Criminal Tribunals for the Former Yugoslavia and Rwanda ("ICTY/ICTR"). Ambassador De Laurentis's remarks are excerpted below and available at *http://usun.state.gov/briefing/statements/210590.htm*.

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The prevention of mass atrocities and genocide is both a core national security interest and a moral responsibility of the United States. The prosecution of perpetrators of heinous crimes is essential, not only for the sake of justice and accountability, but also to facilitate transitions from conflict to stability and to deter those who would commit atrocity crimes. Thus, the United States has strongly supported the work of International Criminal Tribunals for the Former Yugoslavia and Rwanda since they began to fulfill dual goals of justice and prevention.

In the 20 years since the Security Council established the ICTY, the Tribunal has made a significant contribution to international justice. The body of work of both the ICTY and the ICTR—established a year later—reflects the bedrock principle of providing fair trials for the accused and the opportunity for every defendant to have his day in Court. This has been a hallmark of international justice since the Nuremberg trials and remains critical to advancing the rule of law internationally.

While no system of justice is perfect, the United States has always respected the rulings of the ICTY and ICTR and celebrates the progress that both Tribunals have made toward completing their work. Only three ICTY trials are expected to continue past the end of this year, all of which are for the late-arrested accused. We look forward to the July 1st opening in The Hague of the branch of the Mechanism for International Criminal Tribunals that will handle any ICTY appeals after this month. The Arusha branch of the MICT has been open for almost a year and has taken some consequential steps, including ordering the transfers of three high-level accused to the courts of Rwanda when they are apprehended. We appreciate the considerable work by both Tribunals to share resources with the MICT to reduce costs. We look forward to further measures to streamline operations while maintaining the highest standards of justice. At the same time, we recognize that budgets for the next few years must support new premises for the MICT Arusha branch, archives for both Tribunals, accommodations for victims and witnesses, outreach activities focusing on reconciliation, and judicial proceedings which may arise.

As a measure of our support to the ICTR and the countries of the Great Lakes, and as Judge Marron and Prosecutor Jallow graciously noted, the United States recently announced an expansion of our reward program for fugitives. Under the War Crimes Rewards Program, the United States now offers rewards of up to $5 million for information leading to the arrest, transfer, or conviction of the nine ICTR fugitives as well as designated foreign nationals accused of crimes against humanity, genocide, or war crimes by any international, mixed, or hybrid criminal tribunal. The list of Rewards subjects now includes Joseph Kony, two other leaders of the Lord's Resistance Army, and Sylvestre Mudacumura, sought by the International Criminal Court for crimes allegedly committed in the DRC.

We also note the importance of resolving the issue of the relocation of acquitted and released persons in Tanzania and, to this end, welcome the ICTR's new Strategic Plan.

Mr. President, what we have supported in the past twenty years is a system of justice that aims to hold accountable those responsible for some of the most monstrous crimes known to humankind and prevent them from recurring. The tribunals continue to play an indispensable role in establishing global respect for the rule of law. And the United States' commitment to working with the international community toward peace and justice remains steadfast.

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On October 14, 2013, William P. Pope, Senior Advisor for the U.S. Mission to the UN, delivered remarks on the report of the ICTY, ICTR, and Residual Mechanism for International Criminal Tribunals ("MICT") in New York. His remarks are excerpted below and available in full at *http://usun.state.gov/briefing/statements/215558.htm*.

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This year marks the 20th anniversaries of the creation of the ICTY, and, subsequently, the ICTR. As we all recall, these tribunals were set up in response to the horrors committed in Rwanda and Yugoslavia in the 1990s, when the slaughter of hundreds of thousands led to a wave of international revulsion and to cries for justice. The ICTR and ICTY were founded on the idea that those responsible for mass atrocities, no matter what rank or official position, must be brought to justice. Once the ICTY and ICTR were fully up and running, they began thoroughly addressing serious issues of international justice. Today the two courts have tried more than 200 defendants accused of heinous crimes, including top military and political leaders. The tribunals have operated on the principles of fairness, impartiality, and independence. They have also built up a robust body of international humanitarian law.

With the historic work of the tribunals now nearing completion, the United States heartily commends the efforts of both tribunal Presidents to enact cost-saving managerial and administrative measures, and to transfer the remaining functions of the tribunals to the Mechanism for International Criminal Tribunals, MICT. At the same time, we recognize that the exact closure dates will depend on the completion of ongoing and soon-to-begin trials and appeals.

Turning to the ICTY, we note that it continues to focus on the completion of all trials and appeals, rendering 13 trial, appellate and contempt judgments between August 2012 and July 2013. We are pleased that the Hague branch of the MICT began operating in July 2013. We also salute the continuing work of the ICTY to build capacity amongst judges, prosecutors and defense counsel in the former Yugoslavia. The United States urges all governments in the region to continue to work towards reconciliation, avoiding statements that inflame tensions, and to continue to bring war criminals to justice in local courts.

Regarding the ICTR, we note with satisfaction that the tribunal has wrapped up its workload of trials and continues completing appeals, hopefully by 2015. The MICT in Arusha opened in 2012 and is operating smoothly. The United States urges regional governments to work with the tribunal on the relocation of several persons who have served their sentences but are unable to return to Rwanda. We call upon all states to cooperate with the ICTR in apprehending all remaining fugitives and bringing these accused mass murderers to trial.

The United States remains committed to working with the United Nations and the international community to help protect populations from mass atrocities, through tribunals and all other institutions and initiatives at our disposal.

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4. Special Court for Sierra Leone

On September 26, 2013, the Appeals Chamber of the Special Court for Sierra Leone issued a decision upholding the conviction of former President of Liberia Charles Taylor for war crimes and crimes against humanity. Secretary Kerry issued a press statement, below, available at *http://www.state.gov/secretary/remarks/2013/09/214823.htm*.

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Today's ruling upholding the conviction of former Liberian President Charles Taylor marks a milestone for the people of Sierra Leone and Liberia, and for international criminal justice.

In holding Charles Taylor accountable for war crimes and crimes against humanity, the Appeals Chamber of the Special Court of Sierra Leone has brought a measure of justice to the people of Sierra Leone, and helped to cement the foundation on which reconciliation can proceed.

This fight against impunity for the worst crimes known to humankind is personal for me.

The last piece of legislation I helped to pass as a Senator expanded and modernized the State Department's War Crimes Rewards Program.

As I was awaiting confirmation to become Secretary of State, the bill came to President Obama's desk and he signed it into law.

We need tools like this to help ensure that criminals like Charles Taylor answer for their crimes.

I am proud of the role that the United States played in drafting and negotiating UN Security Council Resolution 1315 (2000), which paved the way for the Special Court that convicted Taylor and has now brought its trials and appeals to a close.

The United States has been a strong supporter of the Court and its work for a simple reason: We refuse to accept a world where those responsible for crimes of this magnitude live in impunity.

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5. Special Tribunal for Lebanon

The State Department issued a press statement on December 30, 2013, available at *www.state.gov/r/pa/prs/ps/2013/219182.htm*, in which the United States welcomed Lebanon's decision to meet its 2013 funding obligations to the Special Tribunal for Lebanon. The press statement went on to say:

> We recognize and commend caretaker Prime Minister Mikati's strong leadership in ensuring that the government met this important commitment. We fully support the work of the Tribunal and its efforts to find and hold accountable those responsible for reprehensible and destabilizing acts of violence in Lebanon.

> The December 27 assassination bombing in Beirut is a stark reminder that for too long, Lebanon has suffered from a culture of impunity for those who use murder and terror to promote their political agenda against the interests of the Lebanese people. The Tribunal, working with the Government of Lebanon, will help end this impunity by providing a transparent, fair process to determine responsibility for the terrorist attack that killed former Prime Minister Hariri and scores of others.
>
> Continued financial support and ongoing cooperation by Lebanon's political, judicial, and law enforcement authorities are critical to the Tribunal's work. That is why the United States has provided strong financial support to the Tribunal since its inception, and we will continue to do so. We urge the international community to continue to support the Tribunal and the Government of Lebanon to achieve the shared goals of ensuring justice and ending impunity. We stand with the Lebanese people in these efforts and will continue to do so.

6. Khmer Rouge Tribunal ("ECCC")

In 2013, the United States continued to support the work of the Extraordinary Chambers in the Courts of Cambodia ("ECCC"), also known as the Khmer Rouge Tribunal. On June 26, 2013, Deputy Secretary of State William Burns signed the required certification that the United Nations and Government of Cambodia are taking credible steps to address allegations of corruption and mismanagement within the ECCC. 78 Fed. Reg. 78,463 (Dec. 26, 2013). Deputy Secretary Burns provided the certification pursuant to Section 7044(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Division I, Pub. L. 112-74) (SFOAA), as carried forward by the Full-Year Continuing Appropriation Act, 2013 (Div. F, Pub. L. 113–6). See *Digest 2010* at 145 for background on the original certification requirement.

7. Bangladesh International Crimes Tribunal

In January 2013, Bangladesh's International Crimes Tribunal ("ICT") announced the conviction and death sentence of Abul Kalam Azad for crimes against humanity committed during Bangladesh's 1971 Liberation War. The State Department issued a press statement on January 22, 2013, noting the sentence, which occurred after a trial in absentia. The press statement is available at *www.state.gov/r/pa/prs/ps/2013/01/203143.htm* and included the following:

> The United States supports bringing to justice those who commit such crimes. However, we believe that any such trials must be free, fair, and transparent, and in accordance with domestic standards and international standards Bangladesh has agreed to uphold through its ratification of international agreements, including the International Covenant on Civil and Political Rights.

> As Bangladesh addresses the legacy of atrocities committed during the Liberation War and as we await further verdicts by the Bangladesh International Crimes Tribunal, the United States urges the Government of Bangladesh to adhere to the due process standards that are part of its treaty obligations, and to fully respect the rule of law.

Cross References

Reviewability of visa denial based on terrorism-related activity, **Chapter 1.C.2.**
Visa and information sharing agreements, **Chapter 1.C.3.**
Namibia's reservation to the Terrorism Financing Convention, **Chapter 4.A.2.**
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